...s Law Publishers,
...EET STREET,
...NDON, E.C.

VALUABLE LAW WORKS

PUBLISHED BY

STEVENS AND SONS,

LIMITED,

119 & 120, CHANCERY LANE, LONDON, W.C.

JANUARY, 1891.

The Annual Practice for 1890-91.—Edited by Thomas SNOW, Barrister-at-Law; CHARLES BURNEY, a Chief Clerk of the Hon. Mr. Justice Chitty, Editor of "Daniell's Chancery Forms"; and F. A. STRINGER, of the Central Office, Author of "Oaths and Affirmations." 2 *Vols. Demy* 8*vo. Price* 21*s. cloth.*

"A book which every practising English lawyer must have."—*Law Quarterly Review.*

Greenwood's Practice of Conveyancing, with Concise Precedents.—A Manual of the Practice of Conveyancing. Showing the present Practice relating to the daily routine of Conveyancing in Solicitors' Offices, to which are added Concise Common Forms and Precedents in Conveyancing. *Eighth Edition.* By HARRY GREENWOOD, M.A., LL.D., Barrister-at-Law. *Demy* 8*vo.* 1891. *Price* 16*s. cloth.*

"One of those books which no lawyer's bookshelf should be without. . . . A complete guide to Conveyancing."—*Law Gazette,* December 4, 1890.

Pollock's Digest of the Law of Partnership.—Incorporating the Partnership Act, 1890. *Fifth Edition.* By SIR FREDERICK POLLOCK, Bart., Barrister-at-Law. Author of "Principles of Contract," "The Law of Torts," &c. *Demy* 8*vo.* 1890. *Price* 8*s.* 6*d. cloth.*

Pollock's Law of Torts.—A Treatise on the Principles of Obligations arising from Civil Wrongs in the Common Law. *Second Edition,* to which is added the draft of a Code of Civil Wrongs, prepared for the Government of India. By SIR FREDERICK POLLOCK, Bart., of Lincoln's Inn, Barrister-at-Law. *Demy* 8*vo.* 1890. *Price* 1*l.* 1*s. cloth.*

Pollock's Principles of Contract.—Being a Treatise on the General Principles relating to the Validity of Agreements in the Law of England. *Fifth Edition.* With a New Chapter. By SIR FREDERICK POLLOCK, Bart., M.A., LL.D., Barrister-at-Law. *Demy* 8*vo.* 1889. *Price* 1*l.* 8*s. cloth.*

Edmunds on Patents.—The Law and Practice of Letters Patent for Inventions, with the Patent Acts and Rules annotated, and the International Convention; a full Collection of Statutes, Forms and Precedents, and an Outline of Foreign and Colonial Patent Laws, &c. By LEWIS EDMUNDS, assisted by A. WOOD RENTON, Esqrs., Barristers-at-Law. *Royal* 8*vo.* (992 *pp.*) 1890. *Price* 1*l.* 12*s. cloth.*

"We have nothing but commendation for the book. Conceived in a large and comprehensive spirit, it is well and thoroughly carried out. . . . . The statement of the existing law is accurate and clear. . . . . The book is one to be recommended."—*Solicitors' Journal,* June 14, 1890.

Sebastian's Law of Trade Marks and their Registration, and matters connected therewith, including a Chapter on Goodwill. Together with the Patents, Designs, and Trade Marks Acts, 1883-8, and the Trade Marks Rules and Instructions thereunder, Forms and Precedents; the Merchandise Marks Act, 1887, and other Statutory enactments; and the United States Statutes, 1870 to 1881, and the Rules and Forms thereunder, and the Treaty with the United States, 1877. *Third Edition.* By LEWIS BOYD SEBASTIAN, B.C.L., M.A., of Lincoln's Inn, Esq., Barrister-at-Law. *Demy* 8*vo.* 1890. *Price* 1*l.* 5*s. cloth.*

"The work stands alone as an authority upon the law of trade marks and their registration."—*Law Journal,* August 2, 1890.

Smith's Compendium of Mercantile Law.—*Tenth Edition.* By JOHN MACDONELL, Esq., one of the Masters of the Supreme Court, assisted by GEO. HUMPHREYS, Esq., Barrister-at-Law. 2 *Vols. Royal* 8*vo.* 1890. *Price* 2*l.* 2*s. cloth.*

"Of the greatest value to the mercantile lawyer"—*Law Times,* March 22, 1890.

Prideaux's Precedents in Conveyancing.—With Dissertations on its Law and Practice. *Fourteenth Edition.* By FREDERICK PRIDEAUX, late Professor of the Law of Real and Personal Property to the Inns of Court, and JOHN WHITCOMBE, Esqrs., Barristers-at-Law. 2 *Vols. Royal* 8*vo.* 1889. *Price* 3*l.* 10*s. cloth.*

"The most useful work out on Conveyancing."—*Law Journal.*

*** *A Catalogue of New Law Works* (1891) *post free on application.*

Palmer's Company Precedents.—Conveyancing and other Forms and Precedents for use in relation to Companies subject to the Companies Acts, 1862 to 1890. Arranged as follows:—Promoters, Prospectuses, Agreements, Memoranda and Articles of Association, Resolutions, Notices, Certificates, Private Companies, Power of Attorney, Debentures and Debenture Stock, Policies, Petitions, Writs, Statements of Claim, Judgments and Orders, Reconstruction, Amalgamation, Arrangements, Special Acts, Provisional Orders, Winding-up. With Copious Notes and an Appendix containing the Acts and Rules. *Fifth Edition.* By FRANCIS BEAUFORT PALMER, assisted by CHARLES MACNAGHTEN, Esqrs., Barristers-at-Law. *Royal 8vo.* 1891. (*Nearly ready.*)

"In company drafting it stands unrivalled."—*Law Times.*

Godefroi's Law of Trusts and Trustees.—*Second Edition.* By HENRY GODEFROI, Esq., Barrister-at-Law. *Royal 8vo.* 1891. (*Nearly ready.*)

Goddard's Treatise on the Law of Easements. — *Fourth Edition.* By JOHN LEYBOURN GODDARD, Esq., Barrister-at-Law. *Demy 8vo.* 1891. (*Nearly ready.*)

Pitt-Lewis' Complete Practice of the County Courts, including that in Admiralty and Bankruptcy, embodying the County Courts Act, 1888, and other existing Acts, Rules, Forms, and Costs, with Full Alphabetical Index to Official Forms, Additional Forms, and General Index. *Fourth Edition.* By G. PITT-LEWIS, Esq., Q.C., M.P., Recorder of Poole. 2 *Vols. Demy 8vo.* 1890. *Price 2l. 10s. cloth.* *** *The Volumes sold separately, price, each,* 30*s.*

"The Standard County Court Practice."—*Solicitors' Journal.*

Chitty's Index to all the Reported Cases decided in the several Courts of Equity in England, the Privy Council, and the House of Lords, with a Selection of Irish Cases on or relating to the Principles, Pleading and Practice of Equity and Bankruptcy from the Earliest Period. *Fourth Edition.* Wholly Revised, Re-classified, and brought down to the end of 1883. By HENRY EDWARD HIRST, Esq., Barrister-at-Law. *Complete in 9 Vols. Royal 8vo.* 1883-89. *Price 12l. 12s. cloth.* *** *The Volumes may be had separately to complete Sets.*

"The work is thoroughly well done."—*Law Quarterly Review.*

Fisher's Digest of the Reported Decisions of the Courts of Common Law, Bankruptcy, Probate, Admiralty, and Divorce, together with a selection from those of the Court of Chancery and Irish Courts. From 1756 to 1883 inclusive. Founded on Fisher's Digest. By JOHN MEWS, Assisted by C. M. CHAPMAN, HARRY H. W. SPARHAM, and A. H. TODD, Barristers-at-Law. *In 7 Vols. Royal 8vo.* 1884. *Price 12l. 12s. cloth.*

Mew's Consolidated Digest of all the Reports in all the Courts for the Years 1884-88 inclusive. By JOHN MEWS, Barrister-at-Law. *Royal 8vo.* 1889. *Price 1l. 11s. 6d. cloth.*

The Annual Digest for 1889. By JOHN MEWS, Barrister-at-Law. *Royal 8vo. Price 15s. cloth.* *** *The above two works bring Fisher's Common Law and Chitty's Equity Digests down to the end of* 1889.

Roscoe's Criminal Law.—A Digest of the Law of Evidence in Criminal Cases. *Eleventh Edit.* By HORACE SMITH and GILBERT GEORGE KENNEDY, Esqrs., Metropolitan Police Magistrates. *Demy 8vo.* 1890. *Price 1l. 11s. 6d. cloth.*

"What Roscoe says, most judges will accept without question."—*Law Times.*

Roscoe's Digest of the Law of Evidence on the Trial of Actions at Nisi Prius.—*Fifteenth Edition.* By MAURICE POWELL, Esq., Barrister-at-Law. 2 vols. *Demy 8vo.* 1891. (*Nearly ready.*)

Brooke's Notary.—A Treatise on the Office and Practice of a Notary of England. With a full Collection of Precedents. *Fifth Edit.* By GEORGE F. CHAMBERS, Esq., Barrister-at-Law. *Demy 8vo.* 1890. *Price 1l. 1s. cloth.*

Stringer's Oaths and Affirmations in Great Britain and Ireland; being a Collection of Statutes, Cases, and Forms, with Notes and Practical Directions for the use of Commissioners for Oaths, and of all Courts of Civil Procedure and Offices attached thereto. [In succession to "Braithwaite's Oaths."] By FRANCIS A. STRINGER, of the Central Office, Supreme Court of Judicature, one of the Editors of the "Annual Practice." *Crown 8vo.* 1890. *Price 3s. 6d. cloth.*

"Indispensable to all Commissioners."—*Solicitors' Journal.*

*** *All Standard Law Works are kept in stock, in law calf and other bindings.*

MIDDLE TEMPLE LIBRARY

KN 3057 WVR

Downstairs 44/-

See 57 & 58 Vict. c. 47. 1894

THE LAW

RELATING TO

BUILDING SOCIETIES:

WITH

APPENDICES CONTAINING THE

STATUTES, TREASURY REGULATIONS, ACT OF SEDERUNT,

AND

PRECEDENTS OF RULES AND ASSURANCES.

BY

EDWARD ALBERT WURTZBURG,

OF LINCOLN'S INN, ESQ., BARRISTER-AT-LAW.

SECOND EDITION.

LONDON:

STEVENS AND SONS, LIMITED,

119 & 120, CHANCERY LANE,

Law Publishers and Booksellers.

1892

LONDON:
PRINTED BY C. F. ROWORTH, GREAT NEW STREET, FETTER LANE, E.C.

PREFACE TO THE SECOND EDITION.

THE previous edition of this book was called "The Acts relating to Building Societies," and, as its title denoted, consisted simply of the statute law on the subject, with the addition of such notes as seemed appropriate. While preparing the present edition, however, I came to the conclusion that the book would be more generally useful if it were thrown into the shape of a systematic treatise on the law relating to Building Societies, instead of following the order of the sections in the various statutes. The whole work has accordingly been re-cast, and the result is rather a new book than a new edition. My aim has been to produce a text-book which will be of use not only to lawyers but also to secretaries and directors of building societies. In citing cases I have always given the references to all the current reports; but as many who use the book may not have ready access to any law

library, where they might consult the authorities for themselves, I have not hesitated to quote freely from the many valuable judgments by which this branch of the law has recently been elucidated. The statutes and the Treasury Regulations are added in an Appendix, and I have also retained the Precedents of Rules and Assurances which were comprised in the former edition.

E. A. W.

8, Old Square, Lincoln's Inn,
August, 1892.

TABLE OF CONTENTS.

CHAPTER I.

PAGE

THE NATURE AND OPERATIONS OF A BUILDING SOCIETY - 1—11

CHAPTER II.

THE DIVISION OF BUILDING SOCIETIES INTO INCORPORATED AND UNINCORPORATED SOCIETIES - - 12—21

CHAPTER III.

THE REGISTRAR - - - - - - 22—26

CHAPTER IV.

THE FORMATION OF A BUILDING SOCIETY - - 27—35

CHAPTER V.

THE PURPOSES AND POWERS OF A BUILDING SOCIETY - 36—85

CHAPTER VI.

THE OFFICERS OF THE SOCIETY - - - 86—118

CHAPTER VII.

THE RIGHTS AND LIABILITIES OF MEMBERS - - 119—144

CHAPTER VIII.

MORTGAGES TO BUILDING SOCIETIES - - - 145—178

CHAPTER IX.

THE MODE OF SETTLING DISPUTES BETWEEN A BUILDING SOCIETY AND ITS MEMBERS - - - 179—199

CHAPTER X.

TERMINATION, DISSOLUTION, AND WINDING-UP - - 200—253

APPENDICES.

APPENDIX A.

THE STATUTES RELATING TO INCORPORATED SOCIETIES.

PAGE

The Building Societies Act, 1874, 37 & 38 Vict. c. 42 - - - - - - - 255—274
The Building Societies Act, 1875, 38 Vict. c. 9 - 275, 276
The Building Societies Act, 1877, 40 & 41 Vict. c. 63 - - - - - - - 277—279
The Building Societies Act, 1884, 47 & 48 Vict. c. 41 - - - - - - 280, 281

57 & 58 Vict. c. 47 1894

APPENDIX B.

THE TREASURY REGULATIONS, 1884 - - 282—311

APPENDIX C.

ACT OF SEDERUNT, regulating the winding-up of building societies in the Sheriff Courts of Scotland - - - - - - 312—317

APPENDIX D.

THE STATUTES RELATING TO UNINCORPORATED SOCIETIES.

6 & 7 Will. 4, c. 32 - - - - 318—322
10 Geo. 4, c. 56 - - - - - - 323—342
4 & 5 Will. 4, c. 40 - - - - 343—346

APPENDIX E.

PRECEDENTS OF RULES AND ASSURANCES.

Rules of a permanent building society - - 347—362
Mortgage of leaseholds to a permanent building society - - - - - 363—367
Mortgage of freeholds and copyholds to a terminating building society - - - - 368—371
Conveyance of an equity of redemption by an advanced member, the society concurring - 371—374

INDEX - - - - - - - - 375—407

TABLE OF CASES.

PAGE

Absolom *v.* Gething - - - - - - 118
Accident Insurance Company *v.* Accident, Disease, and General Insurance Corporation - - - - - - 32
Ador, Ex parte, Re Browne and Wingrove - - - 155
Agnew *v.* Murray - - - 9, 12, 15, 62, 73, 74
Albion Mutual Permanent Benefit Building Society, Re - - 228
Alexander *v.* Simpson - - - - - - - 132
——— *v.* Worman - - - - - 104, 107
Alison, Re, Johnson *v.* Mounsey - - - - 161
Allan *v.* Miller - - - - - - - - 102
—— *v.* Urquhart - - - - - - - 124
Allard *v.* Bourne - - - - - - - - 103
Alliance Society, Re - - - - - - 238
Andrews *v.* City Permanent Building Society - - - 159
——— *v.* Swansea Cambrian Benefit Building Society - 206
Archer *v.* Harrison - - - - - - - 148
Armitage *v.* Walker - - - - 137, 138, 196, 199
Armstrong, Ex parte - - - - - - - 116
Atkins, In re, Ex parte Edmunds - - - - 117
Atkinson *v.* The Bradford Third Equitable Benefit Building Society - - - - - - - 57
Attorney-General *v.* Gilpin - - - - - - 72
——— *v.* Phillips - - - - 53, 71
Auld *v.* Glasgow Working Men's Provident Investment Building Society - - - - 128, 138, 220, 244
Australian Mortgage, Land, and Finance Company *v.* Australian and New Zealand Mortgage Company - - - 32

Barnard v. Tomson. 1894. 1 Ch. 374

Bailes *v.* Sunderland Equitable Industrial Society, Limited - 158
Bailey, Ex parte - - - - - - - 117
Bank of Ireland *v.* Trustees of Evans' Charities - - - 103
Barnard *v.* Pilsworth - - - - - - - 70
Barrett *v.* Markham - - - - - - - 91
Bath, Ex parte, Re Phillips - - - 153, 154, 165
Beattie *v.* Lord Ebury - - - - - - - 82
Bell *v.* London and South Western Bank - - - 146, 160
Blackburn and District Benefit Building Society, Re 137, 237, 247
—— —— —— —— Ex parte Graham 251

PAGE
Blackburn Benefit Building Society *v.* Cunliffe Brooks & Co. 69, 79
Blackburn Building Society *v.* Cunliffe Brooks & Co. - 77, 79
Blair *v.* Broadfoot's Trustees and Lyle - - - 240
Bolton Benefit Loan Society, In re - - - - 215
Boney *v.* Charter - - - - - - 160
Bottom Gate Industrial Society, Re - - - - 81
Bottomley *v.* Fisher - - - - - - 102
Brailsford's Case, Re Sheffield Permanent Building Society - 240
Brimelow *v.* Murray - - - - - - 15
Bristol and Clifton Permanent Building Society *v.* Harbour - 122
Bristol Athenæum, In re The - - - - - 63
Britannia Permanent Benefit Building Society, Re (63 L. T. 304) - - - - - - - 250, 252
Britannia Permanent Benefit Building Society, Re (65 L. T. 196) - - - - - - - - 225
Briton Medical and General Life Association, In re - - 51
Browne and Wingrove, Re, Ex parte Ador - - - 155
Brownlie *v.* Russell - - 1, 125, 220, 221, 223, 224, 233, 236
Buckle *v.* Lordonny - - - - - 195, 226
Burge, Ex parte - - - - - - 118

Caledonian Rail. Co. *v.* Carmichael - - - - 246
Calvert's Case, Re Guardian Permanent Benefit Building Society - - - - - - 14, 73, 74
Card *v.* Carr - - - - - - - 143
Carlisle Banking Co. *v.* Thompson - - - - - 170
Cartridge *v.* Griffiths - - - - - - 113
Cefn Cilcen Mining Company, Re - - - - - 56
Chapleo *v.* Brunswick Building Society - 61, 76, 81, 82, 84
Charles *v.* Jones - - - - - 155, 163, 164
Charnock, Ex parte, Re West Riding of Yorkshire Permanent Benefit Building Society - - - - 136, 222
Christie *v.* Northern Counties Permanent Benefit Building Society - - - - - - 138, 184, 185
Cilfoden Benefit Building Society, Re - - - - 209
Clarkson *v.* Henderson - - - - - - 142
Clayton's Case - - - - - - - 78
Collen *v.* Wright - - - - - - 61, 81
Collins *v.* Collins - - - - - - 124
Colonial Life Assurance Company *v.* Home and Colonial Assurance Company, Limited - - - - - 32
Coltman, Re, Coltman *v.* Coltman - - - 47, 67
Compagnie du Sénégal *v.* Woods - - - - - 184
Corbold, Ex parte, Re The Progressive, &c. Society, Limited - 248
Cordingley *v.* Alliance Society - - - - - 233
Cotterell *v.* Stratton - - - - - - 162
Court Bureau, Re The - - - - - - 216
Crane *v.* Kilpin - - - - - - - 165
Crisp *v.* Bunbury - - - - - - 196
Crookes's Case, Re Sheffield Permanent Building Society - - 240
Cross *v.* Fisher - - - - - 57, 61, 81, 82

PAGE
Crowther *v.* Thorley - - - - - - - 21
Cruikshank *v.* Duffin - - - - - - 123, 164
Cullerne *v.* London and Suburban General Permanent Building Society - - - - - 33, 37, 101, 146
Cunliffe Brooks & Co. *v.* Blackburn Benefit Building Society - 56, 77, 83
Cutbill *v.* Kingdom - - - - 61, 67, 131, 195

Davie *v.* Colinton Friendly Society - - - - 34
Davies *v.* Second Chatham Building Society - 137, 138, 196
Davis' Case, Re Durham County Building Society - - - 83
De Haviland *v.* Bowerbank - - - - - 246
Dewhurst *v.* Clarkson - - - - - 34, 113
Dobinson *v.* Hawks - - - - - 122, 123
Doncaster Permanent Benefit Building and Investment Society, Re - - - - - - - - 248
Doncaster Permanent Building Society, Re (3 Eq. 158) - 209, 222, 225
—— —— —— Re (4 Eq. 579) - - 249
Doubleday *v.* Hosking - - - - - 196, 197
Durham and Northumberland Working Men's Permanent Building Society *v.* Davidson - - - 226, 233
Durham County Building Society, Re, Davis' Case - - 83
Dutton *v.* Marsh - - - - - - 103

East Dulwich 295th Starr-Bowkett Building Society, Re - - 209
Ebsworth and Tidy's Contract, Re - - - - 252
Eclipse Association, Re - - - - - - 116
Edmonds *v.* Foster - - - - - - 51
Edmunds, Ex parte, In re Atkins - - - - - 117
Empson's Case - - - - - - - 235
Entwistle *v.* Davis - - - - - - - 124
Evans *v.* Coventry - - - - - - - 87
—— *v.* Hearts of Oak Benefit Society - - - - 90
Evatt, Ex parte, Re The Old Swan and West Derby Permanent Benefit Building Society - - - - 209

Farmer *v.* Giles - - - - - - - 195
——— *v.* Smith - - - - 148, 174, 176
Faure Electric Accumulator Co., In re - - - - 94
Finlay's Case - - - - - - - 235
Firbank's Executors *v.* Humphreys - - - - 81
First Edinburgh, &c. Starr-Bowkett Building Society *v.* Munro 90
Fleet, Ex parte - - - - - - 117
Fleming *v.* Self - - - - - 3, 147, 148, 195
Flitcroft's Case - - - - - - - 95
Foley *v.* Fletcher - - - - - - - 165
Forest of Dean Coal Mining Co., In re - - - 96
Fourth City Mutual Benefit Building Society *v.* Williams - 169, 171

PAGE
Fourth South Melbourne Building Society, In the Matter of the - - - - - - - - - 32
French *v.* Municipal Permanent Building Society - - - 181

Gibson *v.* Barton - - - - - - - - 51
Glover *v.* Giles - - - - - - - 17, 30
Godwin *v.* Francis - - - - - - - - 81
Goldsmith, Re, Ex parte Osborne - - - - 150
Graham Ex parte, Re Blackburn, &c., Society - - - 251
——— *v.* Edge - - - - - - 251
Greenock Property Investment Co. - - - - 235
Gresham Life Assurance Co., Re, Ex parte Penney - - 133
Grimes *v.* Harrison - - - - 2, 66, 115, 129
Grosvenor Bank *v.* Boaler - - - - - 51
Guardian Fire and Life Assurance Company *v.* Guardian and General Insurance Company, Limited - - - 32
Guardian Permanent Benefit Building Society, Re - 9, 12, 35, 62
—— —— —— —— Calvert's Case - 14, 73
—— —— —— —— Hawkins' Case - 15, 56
—— —— —— —— Scott's Case - - 222

Hack *v.* London Provident Building Society - - - 180
Halsey *v.* Windham - - - - - - 183
Handley *v.* Farmer - - - - - - 148
Harben *v.* Phillips - - - - - - 132
Hardy *v.* Metropolitan Land and Finance Company - 47, 67
Harris, Ex parte - - - - - - 117
Harrison *v.* Timmins - - - - - - 112
Harvey *v.* Municipal Permanent Investment Building Society 152, 175
Hawkins' Case - - - - - - 15, 56
Heanor Friendly Society, Re - - - - 111, 117
Henderson *v.* Bank of Australasia - - - - - 132
Hill (Lord) Friendly Society, Re - - - - 111
Hill's Case - - - - - - - - 73
Hilton *v.* Hill - - - - - - - 199
Holgate *v.* Shutt - - - - - - 51, 68, 69
Horbury Bridge Coal, Iron, and Waggon Co., In re - - 132
Hosking *v.* Smith - - - - - - 171, 173
Huckle *v.* Wilson - - - - - 137, 196
Hughes *v.* D'Eyncourt - - - - - 129, 199
——— *v.* Layton - - - - - - 129, 199

Indian Zoedone Co., In re - - - - - - 132
Ingoldby *v.* Riley - - - - - - 143, 160
Ireland, Bank of, *v.* Trustees of Evans' Charities - - - 103

PAGE
James, Ex parte - - - - - - 105
Jenkin *v.* Row - - - - - - - 160
Jennings *v.* Hammond - - - - - 20
Johnson *v.* Altrincham Permanent Benefit Building Society - 196
——— & Greenwood, Ex parte - - - - - 56
——— *v.* Mounsey, Re Alison - - - - 161
Jones *v.* Merionethshire Permanent Benefit Building Society - 93
—— *v.* Swansea Cambrian Benefit Building Society - - 206
—— *v.* Williams, In re Williams - - - - - 117

Kelsall *v.* Tyler - - - - - 33, 198
Kent Benefit Building Society, Re - - 66, 116, 129
Kinnaird *v.* Trollope - - - - - - 163
Kirkwood *v.* Thompson - - - - - - 161
Knight *v.* Whitmore - - - - - - 91
——— and Tabernacle Permanent Building Society, In re - 186, 187, 188, 199
Knox *v.* Shepherd - - - - - - 198

Laing *v.* Reed - - - - - 33, 62, 73
Law *v.* Garrett - - - - - - 183
Lawrence *v.* Clements - - - - - 171, 173
Laxon & Co., Re - - - - - - 216
Leeds Estate Building and Investment Co. *v.* Shepherd - 101, 105, 106
Leigh *v.* Wrigley - - - - - 55, 56, 57
Lever, Ex parte, Re North Staffordshire Working Men's Building Society - - - - - - - 67
Lindon *v.* Banks - - - - - 89, 182, 196
Locking *v.* Parker - - - - - - - 161
London Assurance *v.* London and Westminster Assurance Corporation, Limited - - - - - - 32
London, Chatham and Dover Rail. Co. *v.* South Eastern Rail. Co. - - - - - - - - 247
London and County Banking Company *v.* Capital and Counties Bank - - - - - - - - 32
London and Metropolitan Counties Benefit Building and Investment Society, In re - - - - 205, 218
London and Provincial Law Assurance Society *v.* London and Provincial Joint-Stock Life Assurance Company - - 32
London Permanent Benefit Building Society, Re - - 217
London and Suburban Bank, Re - - - - - 208
Looker *v.* Wrigley - - - - - 55, 56, 57
Lovejoy *v.* Mulkern - - - - - - 140

Mackenzie *v.* Everton and West Derby Permanent Benefit Building Society - - - - - - 138, 198
Macqueen, Re - - - - - - - 199
Maggi, In re - - - - - - - 117
Marson *v.* Cox - - - - - - 171, 173

PAGE
Martin *v.* Scottish Savings Investment and Building Society - 217
Martinson *v.* Clowes - - - - - - 92, 164
Marzetti's Case - - - - - - - - 97
Matterson *v.* Elderfield - - - - - - 149
Mayor, &c. of Merchants of the Staple of England *v.* Bank of England - - - - - - - - 103
Meek *v.* Wendt - - - - - - - 81
Merchant Banking Company of London *v.* Merchants' Joint-Stock Bank - - - - - - - - 32
Middlesbrough Building Society, Re (54 L. J. Ch. 592) - - 142
—— —— —— Re (53 L. T. 203) - 239, 247
Middlesborough, Redcar and Saltburn, &c. Building Society, Re - - - - - - - 221, 224, 249
Midland Counties Benefit Building Society, Re No. 3 - 209, 217
Mitchells *v.* Caledonian Building Society - - - 137, 197
Moffatt *v.* Farquhar - - - - - - 133
Moore *v.* Rawlins - - - - - - - - 143
Moors *v.* Marriott - - - - - - - 118
Morrison *v.* Glover - - 61, 67, 112, 113, 140, 195
Mosley *v.* Baker - - - - - - - 147
Mosse *v.* Salt - - - - - - - - 165
Moxon *v.* Berkeley Mutual Benefit Building Society - - 159
Moye *v.* Sparrow - - - - - - - - 83
Mulkern *v.* Lord - - - - 180, 194, 195, 198
Mullock *v.* Jenkins - - - - - - 66, 196
Municipal Freehold Land Company *v.* Pollington - 102, 105
Municipal Permanent Investment Building Society *v.* Kent - 89, 101, 180, 181, 182
—— —— —— —— *v.* Richards - 182, 196
Murray *v.* Scott - - - - - 20, 35, 76, 222
Mutual Aid Permanent Benefit Building Society, Re - - 76
Mutual Society, Re - - - - - - 239

National Coffee Palace Company, In re - - - - 81
National Permanent Benefit Building Society, Re - - 214
—— —— —— —— Ex parte Williamson - - - - - - 76, 217
National Permanent Mutual Benefit Building Society, In re - 46, 47, 68
Neath Permanent Benefit Building Society *v.* Luce - 56, 80
Nolloth *v.* The Simplified Permanent Benefit Building Society 54, 124
North British Building Society, Trustees of the 220, 239, 240, 241
—— —— —— —— Finlay's Case 235
North British Building Society *v.* M'Lellan - - 226, 241
North Staffordshire Working Men's Building Society, Re, Ex parte Lever - - - - - - - - 67
Norwich and Norfolk Provident Permanent Benefit Building Society, Re, Ex parte Rackham - - - - 239

PAGE
O'Donnell, Ex parte - - - - - - 91
O'Donohoe's Estate, Re - - - - - 149
Old Swan and West Derby Permanent Benefit Building Society, Re The, Ex parte Evatt - - - - - 209
Onward Building Society, Re - - - - - 209
Orford, Ex parte - - - - - - 117
Osborne, Ex parte, In re Goldsmith - - - - 150
Overend and Gurney Company *v.* Gibb - - - 97
Owen *v.* Roberts - - - - - - 79
Oxford, Ex parte - - - - - - 117
Oxford Benefit Building and Investment Society, In re - - 101

Pare *v.* Clegg - - - - - - - 35
Parker *v.* Butcher - - - - - 142, 143
Payne, Ex parte - - - - - - 196
Pearce *v.* Morrice - - - - - - 185
Pease *v.* Jackson - - - - 171, 172, 173
Penney, Ex parte, Re Gresham Life Assurance Company - - 133
Perratt *v.* London Scottish Building Society - - - 247
Pharmaceutical Society, The *v.* The London and Provincial Supply Association, Limited - - - - - 123
Phillips, Re, Ex parte Bath - - - 153, 154, 165
Pilkington *v.* Baker - - - - - - 142
Pini *v.* Roncoroni - - - - - - 184
Planet Benefit Building and Investment Society, Re - - 217
Poppleton, Ex parte, Re Thomas - - - - 20
Prentice *v.* London - - - - - 195, 198
Price *v.* Taylor - - - - - 102, 112
Priestly *v.* Hopwood - - - - - - 177
Prince of Wales Assurance Co. *v.* Harding - - - 103
Professional, Commercial, and Industrial Permanent Benefit Building Society, Re - - - 73, 209, 217, 222
Progressive Investment and Building Society, Re The, Ex parte Corbold - - - - - - - 248
Prosser *v.* Rice - - - - - - - 171
Protector Endowment Loan and Annuity Company *v.* Grice - 152
Provident Permanent Building Society *v.* Greenhill 142, 146, 160
Pullman, Ex parte, Re West Riding of Yorkshire, &c. Society 228

Queen's Benefit Building Society, Re - - - 209, 217

Rackham, Ex parte, Re Norwich and Norfolk Provident Permanent Benefit Building Society - - - - - 239
Raffles *v.* The Gateshead Conservative Building Society - - 165
Ray, Ex parte - - - - - - - 117
Reeves *v.* White - - - - - - - 197
Reg. *v.* Bannatyne - - - - - - 63
—— *v.* Boynes - - - - - - - 63
—— *v.* Davis - - - - - - - 33
—— *v.* D'Eyncourt - - - - - 129, 199

PAGE
Reg. *v.* Loxdale - - - - - - 184
—— *v.* Newton - - - - - - - 51
—— *v.* Oldham and United Parishes Insurance Society - 63
—— *v.* Registrar of Friendly Societies (19 L. T. (O. S.) 182) - 65
—— *v.* —— —— (L. R. 7 Q. B. 741) - 33
—— *v.* Tidd Pratt - - - - - - - 65
—— *v.* Trafford - - - - - - 196
Reliance Permanent Benefit Building Society, Re - 222, 228, 247
Richardson *v.* Williamson - - - 61, 76, 80, 81
Riddell, Ex parte - - - - - - 118
Roberts *v.* Price - - - - - - 90
Robinson *v.* Trevor - - - - - 171, 173
Rolleston *v.* Cope - - - - - - 177
Rosenberg *v.* Northumberland Building Society - 34, 146, 156, 157, 158
Royal Liver Friendly Society, Re - - - 53, 71

Sangster *v.* Cochrane - - - - 171, 173, 174
Savin, Re - - - - - - - 153
Schweitzer *v.* Mayhew - - - - - - 160
Scottish Property Investment Company Building Society *v.* Boyd - - - - - - 208, 233
Scottish Property Investment Company Building Society *v.* Maclaren - - - - - - - 252
Scottish Property Investment Company Building Society *v.* Stewart - - - - - - 244, 245
Scott's Case, Re Guardian, &c. Building Society - - 222
Seagrave *v.* Pope - - - - - - - 147
Second Commercial Benefit Building Society, Re The - 201, 217
——— Edinburgh and Leith 493rd Starr-Bowkett Building Society *v.* Aitken - - - - - - 204
Selkirk *v.* Taylor - - - - 225, 226, 241
Seventh East Central Building Society, Re - - - 253
Shattock, Re - - - - - - - 117
Shaw *v.* Benson - - - - - - - 20
—— *v.* Simmons - - - - - - 20
Sheffield and South Yorkshire Building Society, Re 126, 136, 222
Sheffield and South Yorkshire Permanent Building Society *v.* Aizlewood - - - - - 38, 97, 146
Sheffield Permanent Building Society, Re, Brailsford's Case - 240
—— —— —— Crookes's Case - 240
Sherriff *v.* Glenton - - - - - - 152
Shiell's Trustees *v.* Scottish Property Investment Society, In Liquidation - - - - - - 75, 100
Sibun *v.* Pearce - - - - 128, 137, 203
Siddall, Re - - - - - - - - 21
Sinclair *v.* Mercantile Building Investment Society - - 45
Sinden *v.* Banks - - - - - - 89, 182, 196
Small *v.* Smith - - - - - - 75, 100

PAGE

Smith *v.* Anderson - - - - - - - 96
—— *v.* Lloyd - - - - - - 196, 197
—— *v.* Pilkington - - - - - - - 148
Smith's Case - - - - - - 156, 157
South London Fish Markets Co., Re - - - - 215
Sparrow *v.* Farmer - - - - 148, 175, 176
Stamers *v.* Preston - - - - - - 171
Stamford Friendly Society, Ex parte - - - - 117
Starr *v.* Wall - - - - - - - 108
Stewart's Case - - - - - - - 243
Sunderland 32nd Universal Building Society, Re - - 207
Sunderland 36th Universal Building Society, Re - 241, 248
Swansea Friendly Society, Ex parte, In re West of England and South Wales District Bank - - - 117, 118

Thomas, Re, Ex parte Poppleton - - - - 20
Thompson *v.* Planet Benefit Building Society - 196, 197
Thorn *v.* Croft - - - - - - - 70
Tierney's Estate, Re - - - - - - 141
Timms *v.* Williams - - - - - - 196
Tosh *v.* North British Building Society - 220, 221, 223, 226, 235
Trott *v.* Hughes - - - - - - 197
Turner *v.* Hancock - - - - - - 163
Tyneside Permanent Building Society, Re - - - 217

Ulster Building Society *v.* Glenton - - - - 156

Vernon *v.* Watson - - - - - - - 91
Voisey, Ex parte - - - - - - - 142

Walker *v.* General Mutual Building Society - 137, 138, 183, 196, 198
——— *v.* Giles - - - - - - 70, 113
——— *v.* The British Guarantee Association - - - 115
Walton *v.* Edge - - - - - - - 237
Ward *v.* Eyre - - - - - - - 247
Warner *v.* Jacob - - - - - - - 155
Waterlow *v.* Sharp - - - - - - - 56
Watson, Ex parte - - - - - - - - 80
——— *v.* Bendigo Permanent Land and Building Society - 129
Webster *v.* British Empire Mutual Life Assurance Co. - - 246
Wenlock, Baroness, *v.* River Dee Co. - - - - 79
Western Suburban and Notting Hill Permanent Benefit Building Society *v.* Martin - - - - 181, 182
West London Bank *v.* Reliance Building Society - - - 104
West London Commercial Bank *v.* Kitson - - - 82

PAGE

West of England and South Wales District Bank, In re, Ex parte Swansea Friendly Society - - - - 117, 118
West Riding of Yorkshire Permanent Benefit Building Society, Re - - - - - - - - - 228
West Riding of Yorkshire Permanent Benefit Building Society, Ex parte Charnock - - - - - 136, 222
West Riding of Yorkshire Permanent Benefit Building Society, Ex parte Pullman - - - - - - - 228
Whipham, Ex parte - - - - - - - 117
Wigfield *v.* Potter - - - - - - - - 21
Williams, In re, Jones *v.* Williams - - - - - 117
——— *v.* Hayward - - - - - - - 71
Williamson, Ex parte, Re National Permanent Benefit Building Society - - - - - - - 76, 217
Willis *v.* Wells - - - - - - - - 195
Wilson *v.* Carrick - - - - - - - 124
——— *v.* Miles Platting Society - - - 156, 157
Wilson's Case - - - - - - - - 83
Wormwell *v.* Hailstone - - - - - - - 112
Wright *v.* Deeley - - - - - - 137, 196
——— *v.* Monarch Investment Building Society - - - 180
Wythes, Ex parte - - - - - - - 165

York and North Midland Rail. Co. *v.* Hudson - - - 95

THE LAW

RELATING TO

BUILDING SOCIETIES.

CHAPTER I.

THE NATURE AND OPERATIONS OF A BUILDING SOCIETY.

Nature of a building society.

A building society is not a joint stock company, nor is it a common law partnership; it is an association of a special kind formed and regulated under particular Acts of Parliament for special purposes (*a*). It may be defined as an association of persons subscribing to a common fund, which is to be employed in making advances to such of the members as desire to obtain them on the security of real or leasehold property. The members are of two classes—unadvanced or investing members, who merely pay their subscriptions and other contributions into the coffers of the society, generally receiving interest in some shape or other for the sums so paid; and advanced or borrowing members, who obtain an advance from the society on mortgage of land or house property. Advanced members may at any time redeem their securities, and unadvanced members may retire from the society, or, as it is termed, "withdraw," on such terms as the rules prescribe. In the preamble to the Building Societies Act of 1836 (*b*), which is the earliest legislative enactment on the

(*a*) *Per* Lord Selborne, *Brownlie* v. *Russell*, 8 App. Cas. p. 248; 48 L. T. 881; 47 J. P. 757; 10 R. (H. L.) 19; 20 Sc. L. R. 481, cited *post*, p. 220.

(*b*) 6 & 7 Will. 4, c. 32.

subject, these societies are said to have been established in different parts of the kingdom, principally amongst the industrious* classes, for the purpose of raising, by small periodical subscriptions, a fund to assist the members thereof in obtaining a small freehold or leasehold property. And in the Building Societies Act, 1874 (*c*), they are described as societies for the purpose of raising, by the subscriptions of the members, a stock or fund for making advances to members, out of the funds of the society, upon freehold, copyhold, or leasehold estate by way of mortgage.

* *Sic.*

Building societies are distinct from freehold land societies.

Building societies must not be confounded with freehold land societies. A freehold land society buys land with the funds contributed by the members of the society, and then divides it amongst them; but a building society advances to its borrowing members money derived from the subscriptions, which the borrowing members themselves lay out in the purchase of lands or buildings and then mortgage them to the society (*d*).

Building societies are of two kinds, terminating and permanent.

Building societies are of two kinds; (1) Terminating; (2) Permanent.

Terminating societies.

A terminating society is a society which by its rules is to terminate at a fixed date, or when a result specified in its rules is attained (*e*). The earlier societies were all of this class, the permanent society being an invention of a later date. The scheme of a terminating society is somewhat as follows. The society is constituted by several persons, each subscribing for a certain number of shares. Upon each of these shares a fixed subscription is made payable so long as the society lasts, the object being to continue the society until the subscriptions, with the interest that has arisen from their investment, shall have

(*c*) 37 & 38 Vict. c. 42, s. 13.

(*d*) *Per* Romilly, M. R., *Grimes* v. *Harrison*, 26 Beav. 435; 28 L. J. Ch. 823; 5 Jur. N. S. 528; 33 L. T. (O. S.) 115; 23 J. P. 421.

(*e*) Building Societies Act, 1874, s. 5.

produced such an amount per share as may have been fixed by the rules. As soon as there are sufficient funds in hand, advances are made to such members as may desire them, in anticipation of the shares which would be payable to them on the termination of the society; the sum advanced being the amount of the member's share or shares, less a discount, and the member who receives the advance executing a mortgage of real or leasehold estate to the society, for securing the due payment by him of his subscriptions and other contributions to the funds of the society. The Bowkett and Starr-Bowkett societies are both varieties of this class.

Permanent societies.

A permanent society, on the other hand, is a society which has not by its rules any fixed date or specified result at which it shall terminate (*f*). Societies of this kind, which are undoubtedly the best and most equitable, may therefore continue their operations for an indefinite period. They are constituted by the agreement of several persons to take shares of a certain fixed value, on which payment has to be made, either in a lump sum or by instalments, until the full amount of the share has been paid up; and the sums so paid generally carry interest. Advances are made to members from time to time, as the funds will permit, on the security of land or house property, the money advanced being usually made repayable by equal instalments, composed of principal and interest and spread over a fixed period.

Nature and operations of a building society.

In his judgment in *Fleming* v. *Self* (*g*), Lord Cranworth, L. C., thus describes the nature and operations of a building society. His remarks were addressed to the case of a terminating society, but they apply in great measure to permanent societies as well, and exhibit in a very clear light the different positions of advanced members, unad-

(*f*) Building Societies Act, 1874, s. 5.

(*g*) 3 De G. M. & G. 997; 24 L. J. Ch. 29; 1 Jur. N. S. 25; 3 W. R. 89; 24 L. T. (O. S.) 101; 3 Eq. Rep. 14; 18 J. P. 772.

vanced or investing members, and withdrawing members. He said:—

"The principle is this, members subscribe monthly sums which are accumulated till the fund is sufficient to give a stipulated sum to each member, and then the whole is divided amongst them: in the society now in question the sum to be raised for each member is 100*l.* If this were all it would be a very simple transaction, mere accumulation, and the only question would be how to invest the sums subscribed to the greatest advantage. But this is not all; one main object is to enable members to obtain their 100*l.* by anticipation on their allowing a large discount. For this purpose, when a sufficient fund is in the hands of the treasurer, the members who desire to get their shares in advance bid, by a sort of auction, the sum which they are ready to allow as discount, and the highest bidder obtains the advance. Thus if at the end of a year a sum of 500*l.* is in the hands of the treasurer arising from the monthly subscriptions, and the holder of ten shares is willing to allow a discount of fifty per cent. (no one offering more), the 500*l.* is or may be advanced to him, being 50*l.* in satisfaction of each of his ten shares. For this accommodation he is bound to pay monthly, till a fund is raised sufficient to give 100*l.* per share to all the other members, not only the original monthly subscription, but also a further monthly sum called redemption money. The statute (*h*) provides that the shares shall not in any society exceed 150*l.* each: in this society the shares are fixed by the rules, as I have already stated, at 100*l.* each. The amount of the monthly subscriptions and redemption money is fixed by the rules of each society; here the monthly subscription on each share is 8*s.* 6*d.*, the monthly redemption money 3*s.* 6*d.*; so that the monthly payment by each member who has not received

(*h*) 6 & 7 Will. 4, c. 32, s. 1.

his share in advance is 8*s*. 6*d*., by those who have been advanced it is 12*s*. If after such an advance as I have supposed no further advance were made, the natural course of the society would be that the members, other than the holder of the ten shares, would continue their monthly subscriptions, and the owner of the ten shares would continue his monthly subscriptions and redemption money, till the fund thus raised should be sufficient to pay 100*l*. per share to every member other than the holder of the ten satisfied shares. Thus if there were one hundred shares, and at the end of the first year there was 500*l*. in hand, the condition of each shareholder before any advance made would be, that he would be bound to pay 8*s*. 6*d*. per month, say 5*l*. per annum, till by means of these payments and the 500*l*. in hand the requisite amount, that is, 10,000*l*., being 100*l*. for each 100*l*. share, should have been raised by accumulation. After the advance, the condition of every shareholder, other than the holder of the ten advanced shares, is, that he is to contribute his monthly payments till they, together with the monthly payments and redemption money contributed by the holder of the advanced shares, are sufficient to realize, not 10,000*l*. but 9,000*l*., that is, 100*l*. for each share other than the ten shares of the advanced member, whose shares will have been already satisfied by the 500*l*. He loses his interest in the 500*l*. advanced to the holder of the ten shares, but, on the other hand, the sum to be raised is only 9,000*l*. instead of 10,000*l*., and the monthly contribution is increased by the amount of the redemption money paid by the member who has received his ten shares in advance. Further advances are made from time to time as funds are accumulated, and as members are inclined to give high discount in order to obtain payment of their shares by anticipation. The gain to the society arises mainly from the high rate of discount which members in want of money are ready to give; in truth, the whole scheme is but an

elaborate contrivance for enabling persons having sums for which they have no immediate want to lend them to others at a very high rate of interest. In order to secure the due payment of the monthly subscriptions and redemption money by the members who have received their shares in advance, they are obliged to give satisfactory real security to the trustees of the society, and the statute protects such mortgages from the operation of the laws which, until last session, were in force against usury. Besides this advance to a member of his share, deducting discount, the rules provide also for the case of a member desiring to withdraw from the society altogether. By the sixteenth rule any member may withdraw on certain terms there laid down, the principle being that he is to pay a small sum by way of fine or penalty if he withdraws at an early date after the formation of the society; but if he withdraws after having been a member, and so having paid his subscriptions, for several years, then on withdrawing he is to receive back the full amount of his subscriptions, and also, if the directors think fit, a further sum to be from time to time fixed by them by way of bonus out of what are called the profits of the society. This is provided for by the sixteenth rule, which is thus. . . . . It is obvious that this is an arrangement which may, if the calculations be properly made, be carried into effect without injury to the society. When a member withdraws, the society thenceforth loses the benefit of his monthly subscriptions, but then they are relieved from the obligation of making up the 100*l.* to which he would eventually become entitled. If the member on withdrawing merely took back the amount of his subscriptions, the society would obviously benefit to the extent of the interest made by means of those subscriptions previously to the withdrawal. It is obvious that out of the interest so realized an allowance may be made to the withdrawing member, still leaving to the society some benefit

from his past contributions. The sums subscribed by a member who withdraws have contributed to make up the fund out of which the shares of those members who have been advanced, that is, have taken a smaller sum at once, allowing a large discount in lieu of the full sum of 100*l.* at a distant day, have been made good. They have, therefore, enabled the society to obtain a larger monthly payment, that is, 12*s.* instead of 8*s.* 6*d.* on each share, and to reduce on favourable terms the number of shares to be eventually provided for; this is in truth substantially an investment at a high rate of interest, and the benefits thereby accruing may not inaptly be designated, together with the interest on ordinary investments, by the name of profit. What is the precise amount of benefit, which from these different causes may have resulted to the society from the subscriptions of each member, must be a problem very difficult to solve, not perhaps admitting of any absolutely accurate solution; but it may be possible to arrive at it in a rough way, so at least as to enable the directors to fix from time to time a sum which may, without detriment to the interests of the society, be paid to any member desirous of withdrawing beyond the amount of the principal sums subscribed by him; and the sixteenth rule enables the directors to fix on such a sum, it being not, I think, inaccurately described as a bonus out of the profits of the society. The interests of members, as well those taking their shares by anticipation as those quitting the society, are thus tolerably well provided for.

"But another case was contemplated, namely, that of members who, having received their shares by anticipation, might be desirous of relieving themselves from the burden of continuing the payment of their monthly subscriptions and redemption money. From the very nature of these societies it is impossible to know with certainty how long it may be necessary to continue the monthly payments: they must be made until the sum necessary to give to

every unadvanced member the full amount of his share, that is, in this society, 100*l.*, has been accumulated: the time required for this purpose will be more or less, according to the amount of benefit which the society may derive from the discount given on advances of shares and from the interest made by investments, in other words, as the profits realized have been large or small. Reasoning *à priori*, the fair course would seem to be, that the society should ascertain as nearly as may be the period of time during which the monthly payments would have to be continued, and then should allow any advanced member to relieve himself from the obligation of continuing his monthly payments on paying down at once a sum equivalent to their present value. Thus, if the monthly payment is 12*s.*, and it is ascertained that these payments must probably continue to be made for ten years, it would seem to be a reasonable arrangement that the advanced member, who is liable to pay 12*s.* per month for ten years, should be freed from his liability on paying down at once a sum which an actuary should say is equivalent in present money to such continued prospective payment. This, however, is not the principle on which the power of redemption is given in this society: the provision on this subject is to be found in the fourteenth rule, it is as follows . . . . . It is impossible to read this rule without being strongly impressed with the belief that those who framed it had not duly considered how it would operate. When an unadvanced member withdraws from the society, it is reasonable, and not necessarily inconsistent with the interest of its remaining members, that he should receive back, not only the principal sums which he has contributed, but also by way of bonus a portion of the benefits which those sums have gained for the society. Up to the time of his withdrawing he has received nothing: when he withdraws he loses all right to the share, that is the 100*l.*, to which, if he had not withdrawn, he would, like every

continuing member, have been eventually entitled, and is content to take in lieu of it the amount of what, for a series of years, he has been paying, together with a portion of what has been, as it were, accumulating in respect of those payments towards the eventual realization of his 100*l.* share. This is the position in which a withdrawing member stands at the time of his withdrawal, but the condition of an advanced member redeeming, which is in truth withdrawing, is very different; he is not a member who has up to the time of his redeeming received nothing; in fact, he has received that which he was content to take, supposing redemption to be out of the question, as an equivalent for the whole of his share. The rule, therefore, which gives to him on redeeming his obligation the same sum under the name of profits as is given to the non-advanced member on withdrawing, appears to be hardly reasonable: still, the question to be decided is, not whether the provision is fair and just, but what is the meaning of the rule: if the meaning is clear, it is the duty of the Court, if possible, to give it effect."

And in *Re Guardian Permanent Benefit Building Society* (*i*), the late Master of the Rolls, Sir George Jessel, made the following observations on the same subject:— "The first point to be observed is that, whatever the effect of the Act of Will. 4 may be, it applies to societies already in existence, and it professes to deal with those societies. It is familiar to all who are interested in the subject that at the time of the Act these societies consisted of two classes of members—investing members and borrowing members, sometimes called advanced and unadvanced. The scheme of those societies was this: there were certain persons who had saved or were saving money and were desirous of

(*i*) 23 Ch. D. 440; 52 L. J. Ch. 857; 32 W. R. 73; 48 L. T. 134. The decision in the case was ultimately reversed by the House of Lords in *Agnew* v. *Murray*, 9 App. Cas. 519; 53 L. J. Ch. 745; 33 W. R. 173; 51 L. T. 462, but the value of this part of the judgment is not thereby impaired.

investing it at a higher rate of interest than the usury laws enabled them to obtain at the time; and other persons who were desirous of either building or buying houses for their own habitation. Those two classes of persons came together; the people who had saved money or were saving money paid it into the society, and it was lent to persons who were desirous of building or buying houses on the security of the houses, and on terms which compelled the borrowers to pay a larger sum by way of interest than five per cent. per annum. That this was the substance of those societies must have been known to the legislature. The societies were divided into two classes, those which were called terminable, and which came to an end at the expiration of a fixed period, sometimes of ten years and sometimes of fifteen, and the other class, called permanent societies, which came to an end when the shares were all paid up (*k*). In both cases, at the termination of the society, the profits were realized and the surplus assets were divided amongst the members who had paid up their shares. They got back their money with an addition in the shape of interest, which, though always expected to be more than five per cent., was sometimes a good deal less. Therefore, the investing members got back their money and interest, and the advanced members got their houses on payment off of the mortgages which were given to secure the sums payable on their shares."

Rules must specify whether society is terminating or permanent.

The rules of all societies established since November 2nd, 1874, and all complete amendments of the rules of societies, whenever established, which are governed by the Building Societies Act of 1874 and the subsequent amending Acts, must specify whether the society is terminating or permanent, though where either of these words forms part of the society's name (as is generally the case with permanent societies), no further statement of the fact is required.

(*k*) Both these classes would now be considered terminating societies.

But, except as respects the limit of their borrowing powers, in the case of incorporated societies (*l*), and the mode of their dissolution, there is no distinction in law between permanent and terminating societies. From the point of view of the lawyer, the important division of building societies, whether terminating or permanent, is the cross-division into incorporated and unincorporated societies, each of these classes being governed by a separate and distinct group of Acts of Parliament. This subject will be discussed in the next chapter.

(*l*) Building Societies Act, 1874, s. 15.

CHAPTER II.

THE DIVISION OF BUILDING SOCIETIES INTO INCORPORATED AND UNINCORPORATED SOCIETIES.

Two classes of societies.

So far as they are regulated by statute, building societies, whether permanent or terminating, are divided into two great classes—(1) Unincorporated; (2) Incorporated.

Unincorporated societies.

(1.) The former class consists of societies which were originally formed under and continue to be still governed by the Benefit Building Societies Act of 1836 (*a*), and the two old and long-repealed Friendly Societies Acts of 1829 (*b*) and 1834 (*c*), the provisions of which were, by a most clumsy piece of legislation (*d*), extended to building societies so far as they might be applicable to the purpose of any benefit building society, and to the framing certifying enrolling and altering the rules thereof in the same manner as if expressly re-enacted. The Act of 1836 was itself repealed by the Building Societies Act, 1874 (*e*), but with a proviso that this repeal should not affect any society in existence on November 2, 1874, until it obtained a certificate of incorporation under the new Act, which many societies have not seen fit to do, preferring to continue under the old law. The Act of 1874 provides, however, that with regard to such subsisting societies as

(*a*) 6 & 7 Will. 4, c. 32. As to the scope and object of this Act, see the judgment of Jessel, M. R., in *Re Guardian Permanent Benefit Building Society*, 23 Ch. D. 440; 52 L. J. Ch. 857; 32 W. R. 73; 48 L. T. 134; and of Lord Blackburn in *Agnew* v. *Murray*, 9 App. Cas. 519; 53 L. J. Ch. 745; 33 W. R. 173; 51 L. T. 462.

(*b*) 10 Geo. 4, c. 56.

(*c*) 4 & 5 Will. 4, c. 40.

(*d*) 6 & 7 Will. 4, c. 32, s. 4.

(*e*) Building Societies Act, 1874, 37 & 38 Vict. c. 42, s. 7.

may not obtain certificates of incorporation under it, all things required to be done by or sent to the barrister appointed to certify the rules of savings banks, and the clerk of the peace, under the provisions of the repealed Act, shall for the future be done by or sent to the registrar of friendly societies (*f*); and, owing to an error which crept into the Act of 1874, all societies whose rules had been certified under the Act of 1836, were, from November 2nd, 1874, to April 22nd, 1875, *deemed* to be societies under the Act of 1874, although they had not obtained any certificate of incorporation. This arose from the wording of section 8 of the Act, which, as originally passed, ran as follows:—

"Every society, the rules of which have been certified under the said repealed Act, *shall be deemed to be a society under this Act*, and may obtain a certificate of incorporation under this Act, and thereupon its rules shall, so far as the same are not contrary to any express provisions of this Act, continue in force until altered or rescinded as hereinafter mentioned" (*g*). This was not what was intended, and the mistake, which is said to have arisen from an accidental transposition of words while the bill was in the House of Lords, was rectified by the short Act of 1875 (*h*), sects. 1 and 2 of which are in the following terms:— Building Societies Act, 1874, s. 8.

"Sect. 8 of the Building Societies Act, 1874, is hereby repealed as from the date of the commencement of such last-mentioned Act: provided that such repeal shall not affect any certificate of incorporation given, or any other thing heretofore done or suffered in pursuance of such section before the date of the passing of this Act" (*i*). Building Societies Act, 1875, s. 1.

"From and after the passing of this Act every society, the rules of which have been certified under the said Act of the session of the sixth and seventh years of the reign Sect. 2.

(*f*) Building Societies Act, 1874, s. 7.
(*g*) *Ibid.* s. 8.
(*h*) Building Societies Act, 1875, 38 Vict. c. 9.
(*i*) *Ibid.* s. 1.

of His late Majesty King William the Fourth, chapter 32, intituled, 'An Act for the regulation of Benefit Building Societies,' may obtain a certificate of incorporation under the Building Societies Act, 1874, *and thereupon* shall be deemed to be a society under that Act; and its rules shall, so far as the same are not contrary to any express provisions of that Act, continue in force until altered or rescinded as in that Act mentioned" (*k*).

The result, however, was that for a period of nearly six months (November 2, 1874, to April 22, 1875), all unincorporated societies were brought under the new law in the same way as if they had been regularly incorporated.

Effect of these sections.

The effect of these various provisions was considered in some of the cases which arose in the winding-up of the Guardian Permanent Benefit Building Society, which was a society certified under the Act of 1836, but not incorporated under the Act of 1874. The 32nd rule of that society gave the directors a general power of borrowing money as occasion might require, under which they obtained loans from different persons, in some instances with and in others without security, and questions arose as to the position of the persons who had made the advances. In *Calvert's Case*, the loans had been made in June, 1874, and July, 1875. The Vice-Chancellor of the Duchy of Lancaster held that the Acts of 1874 and 1875 did not affect the question at all, and therefore that the lender could not have the benefit of sect. 15 of the former Act; but he decided in her favour on other grounds. The Court of Appeal, on the contrary, held that the rule was altogether void, and that the loan created no debt either at law or in equity, but apparently agreed with the Vice-Chancellor that the Acts of 1874 and 1875 did not affect the question (*l*). On appeal to the House of Lords, this

(*k*) Building Societies Act, 1875, 38 Vict. c. 9, s. 2.

(*l*) *Re Guardian Permanent Benefit Building Society, Calvert's Case*, 23 Ch. D. 440, 445; 52 L. J. Ch. 857; 32 W. R. 73; 48 L. T. 134.

decision of the Court of Appeal was reversed, their Lordships holding that the rule was valid, and it therefore became unnecessary to consider the effect of the two Acts of Parliament; see *Agnew* v. *Murray* (*m*), where the loans had been made subsequently to April, 1875, and *Brimelow* v. *Murray* (*n*), where the loans had been made in May and June, 1874. These two cases were in substance, though not in form, appeals from the decision in *Calvert's Case*. *Agnew* v. *Murray* raised only the question of the validity of rule 32; *Brimelow* v. *Murray* raised in addition the question of the effect of the Acts of 1874 and 1875, the contention being that the lending was made valid by the former Act (sects. 8, 15) and not invalidated by the latter.

In *Hawkins' Case* (*o*), which arose in the same winding-up, the loans were made between November 2, 1874, and April 22, 1875, *i. e.*, while sect. 8 of the Act of 1874 was in force. It was accordingly argued for the lender that the loans were made under the borrowing powers conferred by that Act, and must therefore be valid on this ground at least. The Vice-Chancellor held that the argument failed because the provisions of sect. 15, sub-sect. 5 of the Act had not been complied with; but the Court of Appeal reversed this decision, being of opinion that the sub-section referred to was only directory, and did not affect the validity of the security.

Certificate of incorporation, how obtained.

Any society in existence on the 2nd November, 1874, and certified under the old Act of 1836, can obtain a certificate of incorporation under the foregoing provisions. The application must be made by a person authorized by a general meeting of the society specially called for the purpose. It must be made in the form A. prescribed by the Treasury Regulations, and must be accompanied by

(*m*) 9 App. Cas. 519, 525; 53 L. J. Ch. 745; 33 W. R. 173; 51 L. T. 462.

(*n*) 9 App. Cas. 519, 529; 53 L. J. Ch. 745; 33 W. R. 173; 51 L. T. 462.

(*o*) 23 Ch. D. 440.

(1) a copy of the existing rules of the society, purporting to be certified or to be a true copy of rules certified under the Act of 1836; and (2) a statutory declaration by the secretary or other officer in the prescribed form B. If the registrar on receiving the application for a certificate has not already received the rules from the clerk of the peace he must make application for them to the latter, and if he does not then receive them within seven days he must inform the applicant of the fact. The applicant will then be required to prove that the rules are duly certified under the old Act before the society can be incorporated (*p*). On these formalities being complied with, a certificate of incorporation is granted by the registrar, and the society thereupon becomes a body corporate by its registered name, having perpetual succession until terminated or dissolved under sect. 32 of the Act of 1874, and a common seal (*q*).

Vesting of property on incorporation.

All rights of action and other rights, and all estates and interests in real and personal estate belonging to or held in trust for the society, vest in it, on its incorporation, without any conveyance or assignment, except in the case of stocks and securities in the public funds of Great Britain and Ireland, and estates in copyhold or customary hereditaments the title to which cannot be transferred without admittance (*r*).

(*p*) Building Societies Act, 1874, ss. 10, 11, 12; Treasury Regulations, 1884, r. 1, App. B., *infra*.

(*q*) Building Societies Act, 1874, s. 9.

(*r*) *Ibid.* s. 27; Building Societies Act, 1877, ss. 3, 4. Sect. 27, as originally framed, contained the word "now" before the words "belonging to or held in trust for." This was soon found to require amendment, which was effected by ss. 3 and 4 of the Act of 1877. The effect of the three sections taken together appears to be this:—In the case of a society under the old law which obtained a certificate of incorporation in the interval between November 2nd, 1874, and August 14th, 1877, so much only of the property of the society vested in it on its incorporation as belonged to or was held in trust for the society on November 2nd, 1874 (sect. 27); but all property held in trust for such a society on August 14th, 1877, vested in the society on that date (sect. 4). In the case of any society under the old law obtaining a certificate of incorporation since August 14th, 1877, the property belonging to or held in trust for it vests in the society immediately on its incorporation (sects. 3, 27).

The form of a certificate of incorporation is given in the schedule to the Act of 1877 (*s*) : see *post*, p. 30. Form of certificate.

A fee of one pound is payable for the certificate (*t*). Fee.

When once the registrar has given his certificate of incorporation, the Court has no power to declare it void on the ground that it was irregularly obtained: see *Glover* v. *Giles* (*u*). In that case (in which the society was not a party to the action) Mr. Justice Fry, in delivering judgment, said :— Court cannot declare certificate void.

"It appears to me clear that before the certificate was granted by the registrar it was his duty to satisfy himself whether the application was made by authority of a general meeting of the society specially called for the purpose, and he was at liberty to require the person making the application to verify that authority by a statutory declaration, and, upon this being done, and the certificate being granted according to the terms of the Act, the society became incorporated. Now it is said I can declare that incorporation to be void, on the ground that no proper meeting was held, and it is said that the meeting which was held on the 10th of April, 1879, was not a proper meeting within the meaning of the 12th section of the Act, because it was not summoned in compliance with certain rules of the society with regard to the summoning of general meetings. In my view, I have no power to inquire into that at all, and I cannot declare the incorporation to be void. The incorporation of persons into bodies corporate is a prerogative of the Crown, and although in this case the prerogative is exercised under certain statutory provisions, the incorporation is none the less an exercise of the prerogative. There is a perfectly well-known method by which an incorporation may be recalled or made void. Moreover, it is competent to proceed by *quo warranto*, and *Glover* v. *Giles*.

(*s*) Building Societies Act, 1877, s. 6.
(*t*) Treasury Regulations, 1884, r. 25, App. B., *infra*.
(*u*) 18 Ch. D. 173 ; 50 L. J. Ch. 568 ; 29 W. R. 603 ; 45 L. T. 344.

to show that persons who represent themselves as members or officers of a corporation are not so. But it is quite new to me to hear that some of the individual corporators of a corporation can come to this Court and ask to have it declared, as against other members of the corporation, that the incorporation was obtained by fraud or irregularity. And there is in this case, as it appears to me, this further fatal objection, that the declaration that the incorporation is void is sought for in the absence of the corporation itself, which is not made a defendant to this action. I am in effect asked to declare an incorporation void in the absence of the corporation itself, a step which in common fairness it is impossible for me to take."

Unincorporated societies a diminishing class.

It will be obvious, from what has been said above, that the class of unincorporated societies can never be added to, and must constantly diminish, either (1) by effluxion of time in the case of terminating societies, or (2) by winding-up, or (3) by the societies obtaining certificates of incorporation, and that the whole class will ultimately become extinct.

Incorporated societies.

(2) The second class consists of societies regulated by the Building Societies Acts of 1874, 1875, 1877, and 1884, and the Regulations issued under sect. 44 of the first-named Act by the Secretary of State.

They are either—

(a) Societies established since November 2, 1874, the date on which the Act of 1874 came into operation; or

(b) Societies established previously thereto under the Act of 1836, but which have obtained certificates of incorporation under the Act of 1874.

When once incorporated, a society originally established under the Act of 1836 differs but very slightly from a society established in the first instance under the Act of 1874. The chief difference is in the mode of altering the rules which, in the case of a society originally established

under the old law, can only be altered or rescinded, or an additional rule made, by the vote of three-fourths of the members present at a special meeting called for the purpose, of which meeting notice specifying the proposed alteration, rescission, or addition, must be given to the members in the manner provided by the rules, or, in the absence of such rules, by letters sent through the post seven days previous to the meeting. A society established under the Act of 1874, on the other hand, may alter its rules in any manner its rules direct (*x*). It is not absolutely necessary to alter the rules of an old society on incorporation, but it is always advisable to do so, as the mere fact of incorporation requires conditions (such as the use of the seal) which are inconsistent with the legal position of an unincorporated body, and much practical inconvenience, it is said, has been experienced in some cases by societies which have stopped short at mere incorporation without altering their rules.

A society certified under the repealed Act retains its name on incorporation, although in form it would be inadmissible under the Act of 1874 (*y*).

Scotland and Ireland.

The Building Societies Acts apply to Scotland and Ireland (*z*). In the application of the Act of 1874 to Scotland, "freehold estate" means "heritable estate," "mortgage" means "conveyance or bond and disposition in security," "letters of administration" means "confirmation," and the Court means the Sheriff's Court of the county in which the chief office or place of meeting for the business of the society is situate (*a*).

In Ireland, the Court means the Civil Bill Court within the jurisdiction of which the office or place of meeting is situate (*b*).

(*x*) Building Societies Act, 1874, s. 18.
(*y*) *Ibid.* s. 9.
(*z*) 6 & 7 Will. 4, c. 32, s. 9; Building Societies Act, 1874, ss. 4, 6.
(*a*) *Ibid.* ss. 4, 6.
(*b*) *Ibid.* s. 4.

As to the assistant registrars for Scotland and Ireland respectively, see *post*, p. 24.

Treasury Regulations.

One of her Majesty's Principal Secretaries of State may from time to time make Regulations respecting the fees, if any, to be paid for the transmission, registration, and inspection of documents under the Act of 1874, and generally for carrying the Act into effect (*c*).

The Regulations issued by the Treasury in December, 1884, under the authority of this provision, will be found printed in Appendix B., *infra*.

Secretary for Scotland Act, 1887.

By sect. 2 of the Secretary for Scotland Act, 1887 (*d*), all powers and duties vested in and imposed on one of her Majesty's Principal Secretaries of State by any Act of Parliament, so far as such powers and duties relate to Scotland, were transferred to the Secretary for Scotland. There seems no doubt that this includes the power of making regulations under the Building Societies Act, 1874.

Channel Islands and Isle of Man.

The Building Societies Acts do not extend to the Channel Islands or the Isle of Man.

Unregistered societies.

There is a third class of building societies, which should perhaps be mentioned, consisting of such as have not taken the precaution of registering under any of the Acts relating to building societies, and are therefore subject only to the general law. There appears to be no objection at common law to the formation of an ordinary building society (*e*). But such a society, if consisting of more than twenty members, would, it is conceived, be rendered illegal by sect. 4 of the Companies Act, 1862, unless registered under that Act, as being an association having for its object the acquisition of gain (*f*). A free-

(*c*) Building Societies Act, 1874, s. 44.

(*d*) 50 & 51 Vict. c. 52.

(*e*) *Murray* v. *Scott*, 9 App. Cas. p. 546; 53 L. J. Ch. 745; 33 W. R. 173; 51 L. T. 462, *per* Lord Blackburn.

(*f*) *Shaw* v. *Benson*, 11 Q. B. D. 563; 52 L. J. Q. B. 575; 49 L. T. 651; *Jennings* v. *Hammond*, 9 Q. B. D. 225; 51 L. J. Q. B. 493; 31 W. R. 40; *Shaw* v. *Simmons*, 12 Q. B. D. 117; 53 L. J. Q. B. 29; 32 W. R. 292; *Re Thomas, Ex parte Poppleton*, 14 Q. B. D. 379; 54 L. J. Q. B. 336; 33 W. R. 583; 51 L. T. 602.

hold land society, however, is not within the mischief of this section (*g*).

Lastly, the business of a building society may be carried on by an ordinary joint stock company, formed and registered under the Companies Acts; but in that case, of course, the society is governed exclusively by those statutes, and not by the Acts relating to building societies. Joint stock companies.

(*g*) *Re Siddall*, 29 Ch. D. 1; 54 L. J. Ch. 62; 33 W. R. 509; 52 L. T. 114; *Crowther* v. *Thorley*, 32 W. R. 330; 50 L. T. 43; 48 J. P. 292; reversing the decision below, 31 W. R. 564; 48 L. T. 644; *Wigfield* v. *Potter*, 45 L. T. 612.

CHAPTER III.

THE REGISTRAR.

Position of registrar.

MANY important duties in connection with building societies are assigned by the Building Societies Acts to the registrar, of whom mention has already been made, and it will be convenient, therefore, before proceeding further, to give a brief account of his position.

Under the Act of 1836, and the old Friendly Societies Acts incorporated with it, the rules and alterations of rules of benefit building societies were submitted, in England, to the barrister appointed to certify the rules of savings banks (*a*), who, however, was always the same person as the registrar of friendly societies. When these Acts were repealed by the Building Societies Act, 1874, it was provided that, with regard to such subsisting societies as should not obtain certificates of incorporation under that Act, all things required to be done by or sent to the barrister or advocate and clerk of the peace should for the future be done by or sent to the registrar (*b*).

Definition of registrar.

The Act further provided that, except where otherwise expressed, "the registrar" should mean the registrar for the time being of friendly societies in England, Scotland, or Ireland, as the case might be, who should, for the purposes of the Act, be the registrar of building societies (*c*).

Friendly Societies Act, 1875, s. 10.

By the Friendly Societies Act, 1875 (*d*), the following further provisions were made on this subject:—

The chief and

"(1) There shall be a chief registrar of friendly societies

(*a*) 4 & 5 Will. 4, c. 40, s. 4.
(*b*) Building Societies Act, 1874, s. 7.
(*c*) *Ibid.* s. 3.
(*d*) 38 & 39 Vict. c. 60, s. 10.

(herein termed 'the chief registrar'), and one or more assistant registrars of friendly societies for England (herein termed 'assistant registrars for England'), and such chief registrar and assistant registrars for England shall constitute the central office after mentioned. There shall be an assistant registrar of friendly societies for Scotland (herein termed 'assistant registrar for Scotland'), and an assistant registrar of friendly societies for Ireland (herein termed 'assistant registrar for Ireland'). assistant registrars.

"(2) Every chief registrar and assistant registrar shall be appointed by and shall hold his office during the pleasure of the Treasury. Chief and assistant registrars to hold office during pleasure.

"(3) Every chief registrar shall be a barrister of not less than twelve years' standing, and one at least of the assistant registrars for England, and every assistant registrar for Ireland shall be a barrister or solicitor of not less than seven years' standing, and every assistant registrar for Scotland an advocate, writer to the signet, or solicitor of not less than seven years' standing. The central office may also, with the approval of the Treasury, have attached to it such assistants skilled in the business of an actuary and an accountant as shall from time to time be required for discharging the duties imposed on the office by this Act. Qualification of chief and assistant registrars.

"(4) The central office shall exercise all the functions and powers which are now by law vested in the registrar of friendly societies or the registrar of building societies for England, or, as respects loan societies, building societies, and societies instituted for purposes of science, literature, or the fine arts, in the barrister appointed to certify the rules of savings banks or friendly societies, and shall be entitled to receive all statutory fees payable to such registrar or barrister, and all enactments relating to such registrar or barrister, so far as respects such societies as aforesaid, shall be construed as applying to the central office. Central office to exercise functions of registrar of friendly or building societies for England, and barrister to certify savings banks.

"(6) The chief registrar shall every year lay before Chief regis-

trar to report yearly to Parliament.

Parliament a report of his proceedings and of those of the assistant registrars, and of the principal matters transacted by him and them, and of the valuations returned to or caused to be made by the registrar during the year preceding.

Functions of assistant registrars generally.

"(7) The assistant registrars shall, except as after provided, be subordinate to the chief registrar. They shall, within the countries for which they are respectively appointed, exercise all functions and powers by this Act given to the registrar, and may also, by the written authority of the chief registrar, exercise such of the functions and powers by this Act given to the chief registrar as he shall from time to time delegate to them.

Functions of assistant registrars for Scotland and Ireland.

"(8) Subject to any regulations to be made under this Act, the assistant registrars for Scotland and Ireland respectively shall:—

"(a) Exercise all the functions and powers now vested in the registrars of friendly or building societies for Scotland and Ireland respectively, or, as respects building societies and societies instituted for purposes of science, literature, or the fine arts, vested in Scotland in the Lord Advocate or his depute appointed to certify the rules of friendly societies there, or in Ireland in the barrister appointed to certify the rules of friendly societies there, and shall be entitled to receive all fees payable to such registrar, Lord Advocate, or his depute or barrister respectively, and so that all provisions in any Acts of Parliament, not hereby repealed relating to such registrar, Lord Advocate, or his depute or barrister respectively, shall be construed as applying to such assistant registrars respectively:

"(b) Send to the central office copies of all such documents registered or recorded by them as the chief registrar shall from time to time direct:

"(c) Record all such documents and matters as shall be sent to them for record from the central office, and such other documents and matters as herein provided:

"(d) Circulate and publish, or transmit to or from societies registered within their respective countries, from or to the central office, such information and documents relating to the purposes of this Act as the chief registrar, with the approval of the Treasury, shall from time to time direct:

"(e) Report from time to time their proceedings to the chief registrar as he shall direct.

"(9) No assistant registrar for Scotland or Ireland shall refuse to record any rules or amendments of rules which have been registered by the central office."

Central office.

The registrar for England is therefore the central office consisting of a chief registrar and (at present) one assistant registrar, either or both of whom may do any act required to be done by the registrar. In Scotland and Ireland the duties of registrar are discharged by the assistant registrars for those countries.

Scotland and Ireland.

Official address.

The official address of the registrar is: for England, 28, Abingdon Street, Westminster, London, S.W.; for Scotland, 43, New Register House, Edinburgh; for Ireland, 9, Upper Ormond Quay, Dublin. The registrars have privilege of postage, and therefore no communication to them on official business and marked "On Her Majesty's Service," requires to be stamped.

Evidence.

Any certificate of incorporation or of registration, or other document relating to a society under the Building Societies Acts, purporting to be signed by the registrar, will, in the absence of any evidence to the contrary, be received by all Courts of law and equity, and elsewhere, without proof of the signature (*e*). Under the Treasury

(*e*) Building Societies Act, 1874 (37 & 38 Vict. c. 42), s. 20.

Regulations, however, documents under the Building Societies Acts are to be deemed duly authenticated for the purposes of the Acts and the Regulations if they bear the seal of the central office for registry of friendly societies, or the signature of the assistant-registrar of friendly societies for Scotland or Ireland, as the case may require (*f*), and in practice documents for England and Wales are usually authenticated by the seal of the central office, and not by the signature of the registrar.

Forms in the Regulations may be dispensed with by registrar.

Where a document is tendered for registry which appears to the registrar substantially to comply with the provisions of the Building Societies Acts, he may dispense with the use of any of the forms prescribed by the Regulations; but nothing in this Regulation contained is to hinder the registrar from refusing to register a document not in the prescribed form when it shall appear to him to be unnecessarily long, or to contain extraneous matter (*g*).

The registrar may also modify any such forms to suit particular cases, and may dispense with the obligation to supply a duplicate of any document where such obligation is imposed only by the Regulations (*h*).

(*f*) Treasury Regulations, 1884, r. 26, App. B., *infra*.

(*g*) *Ibid.* r. 27.

(*h*) *Ibid.* r. 28.

CHAPTER IV.

THE FORMATION OF A BUILDING SOCIETY.

Formation of society.

ANY number of persons, not being less than three (*a*), may establish a building society, either terminating or permanent, under the Act of 1874 (*b*). The persons intending to establish the society must make an application to the registrar, in the Form C. prescribed by the Treasury Regulations, for a certificate of incorporation. The application must be signed by three members and the intended secretary or other officer, and must be accompanied by two printed copies of the rules agreed upon for the government of the society, each copy being marked P., and signed by each of the applicants (*c*).

Matters to be set forth in the rules.

The rules must set forth—

1. The name of the society, and chief office or place of meeting for the business of the society:
2. The manner in which the stock or funds of the society are to be raised, the terms upon which paid-up shares (if any) are to be issued and repaid, and whether preferential shares are to be issued, and, if so, within what limits, if any; and whether the society intends to avail itself of the borrowing powers contained in the Act, and if so, within what limits, not exceeding the limits prescribed by the Act:
3. The purposes to which the funds of the society are to be applied, and the manner in which they are to be invested:

(*a*) Building Societies Act, 1874, s. 17.
(*b*) *Ibid.* s. 13.
(*c*) *Ibid.* s. 17; Treasury Regulations, 1884, r. 2, and Form C. annexed thereto.

4. The terms upon which shares may be withdrawn, and upon which mortgages may be redeemed:
5. The manner of altering and rescinding the rules of the society, and of making additional rules:
6. The manner of appointing, remunerating, and removing the board of directors or committee of management, auditors, and other officers:
7. The manner of calling general and special meetings of the members:
8. Provision for an annual or more frequent audit of the accounts and inspection by the auditors of the mortgages and other securities belonging to the society:
9. Whether disputes between the society and any of its members, or any person claiming by or through any member, or under the rules, shall be settled by reference to the Court, or to the registrar, or to arbitration:
10. Provision for the device, custody, and use of the seal of the society, which shall in all cases bear the registered name thereof:
11. Provision for the custody of the mortgage deeds and other securities belonging to the society:
12. The powers and duties of the board of directors or committee of management and other officers:
13. The fines and forfeitures to be imposed on members of the society:
14. The manner in which the society, whether terminating or permanent, shall be terminated or dissolved (*d*).

Rules may be made to provide forms of conveyance, &c.

The society, in a schedule to its rules, may describe the forms of conveyance, mortgage, transfer, agreement, bond, security for deposit or loan, or other instrument necessary for carrying its purposes into execution (*e*).

(*d*) Building Societies Act, 1874, s. 16.

(*e*) *Ibid.* s. 19.

Forms of the bond to be given by the officers of the society under sect. 23, and of the statutory receipt under sect. 42, are given in the schedule to the Act of 1874. Forms of various certificates to be given by the registrar are contained in the schedule to the Act of 1877, and various other forms are appended to the Treasury Regulations, 1884. Forms.

In framing rules for a proposed society, the following observations contained in the Year Book of the friendly societies' registry office should be borne in mind :— Practice of the registrar as to registration of rules on certain points.

Prior to the Conveyancing and Law of Property Act, 1881 (*f*), the registrar did not feel himself justified in registering rules providing for the granting of leases by building societies as mortgagees. Since that Act came into operation, however, rules are admitted to registry which allow building societies, as mortgagees in possession, to grant such leases as are authorized by sect. 18, sub-sects. 3 and following, of the Act in question, viz. :— (1) agricultural or occupation leases for a term not exceeding twenty-one years; and (2) building leases for a term not exceeding ninety-nine years, the term "building lease," by definition x. in sect. 2, including the erecting and improving of, and adding to, and repairing of buildings. But the Conveyancing Acts give no power of leasing to mortgagees not in possession, and rules for the purpose will not be registered in the case of a building society. Nor do rules authorizing the society itself to manage the property or execute improvements appear to be within the powers of a mortgagee under the Conveyancing Acts, or consequently within the scope of the Building Societies Acts. Leasing powers.

The terms upon which shares may be withdrawn must be *bonâ fide* ones. A rule absolutely forbidding withdrawal would not be registered, nor a merely colourable Withdrawal.

(*f*) 44 & 45 Vict. c. 41.

provision for the purpose. But in terminable societies, especially those which lend money without interest, the right of withdrawal may be withheld for the first few years of the society's existence. The terms on which mortgages may be redeemed must also be *bonâ fide* and definite. Thus the terms cannot be left to the discretion of the directors, and if any loss is to be borne by the member through exercising the right to redeem, the maximum limit of such loss must be fixed.

Redemption.

Settlement of disputes.

No provision for the determination of the disputes of a building society under the Act by a general meeting, or by the board of directors, will be registered. But the registrar does not object to a rule requiring all disputes to be considered in the first instance by the board of directors, acting as a kind of court of conciliation, with the object of bringing the parties to terms.

Registration and incorporation.

If the registrar find that the rules contain all the provisions set forth in sect. 16, and that they are in conformity with the Act, he returns one copy of the rules to the secretary or other officer of the society, with a certificate of incorporation, and retains and registers the other copy (*g*). Upon receipt of the certificate, the society becomes a body corporate by its registered name, having perpetual succession until terminated, or dissolved in manner provided by the Act of 1874, and a common seal (*h*).

Form of certificate of incorporation.

The certificate is in the following form (*i*) :—

The registrar of building societies in [England, Scotland, *or* Ireland] hereby certifies that the Building Society, established at in the county of , is incorporated under "The Building Societies Act, 1874."

This day of 18 .

[*Seal of Central Office, or signature of Assistant-Registrar of Friendly Societies.*]

(*g*) Building Societies Act, 1874, s. 17.

(*h*) *Ibid.* s. 9; and see *Glover* v. *Giles*, cited *ante*, p. 17.

(*i*) Building Societies Act, 1877, s. 6.

A fee of one pound is payable for a certificate of incorporation (*k*). Fee.

Any certificate purporting to be signed by the registrar will, in the absence of evidence to the contrary, be received without proof of the signature; for England and Wales, however, documents are usually authenticated by the seal of the central office: see *ante*, p. 26. Certificate to be evidence.

The rules, when registered, are binding on the members and officers of the society, and on all persons claiming on account of a member or under the rules, all of whom are deemed to have full notice thereof (*l*). A printed copy of the registered rules, certified by the secretary or other officer to be a true copy, in the absence of evidence to the contrary, is received as evidence of the rules (*m*). Rules are binding on members and officers.

The society is bound to supply to any person requiring it a complete printed copy of the rules, with a copy of the certificate of incorporation annexed, at a price not exceeding one shilling (*n*). Copy must be supplied.

If any society formed under the Act after November 2nd, 1874, or any persons representing themselves to be a society under the Act, commence business without first obtaining a certificate of incorporation, the person or persons by whom business shall have been so commenced will be liable, for every day business is so carried on, upon summary conviction before justices at the complaint of the registrar, to a penalty not exceeding five pounds (*o*). Penalty for acting without certificate.

No society can be registered in a name identical with that in which a subsisting society is already registered, or so nearly resembling the same as to be calculated to deceive, unless such subsisting society is in course of being terminated or dissolved, and consents to such registration (*p*). The last words in the name of any society esta- Name of society.

(*k*) Treasury Regulations, 1884, r. 25, App. B., *infra*.
(*l*) Building Societies Act, 1874, s. 21.
(*m*) *Ibid.* s. 20.
(*n*) *Ibid.* s. 17.
(*o*) *Ibid.* s. 43.
(*p*) *Ibid.* s. 17. The registrar requires a statutory declaration in such cases.

blished and incorporated under the Acts must be "Building Society," and the registrar may refuse to allow the insertion in the name of any society about to be established and applying for incorporation of any words implying that the society is other than a building society (*q*).

Name in which society may be registered.

The above restriction as to the name in which a society may be registered is similar to that contained in sect. 20 of the Companies Act, 1862. In the following cases, injunctions to restrain the defendants from using the name they had adopted, on account of its similarity to that of the plaintiffs, were refused: *Colonial Life Assurance Co.* v. *Home and Colonial Assurance Co., Limited* (*r*); *London Assurance* v. *London and Westminster Assurance Corporation, Limited* (*s*); *London and Provincial Law Assurance Society* v. *London and Provincial Joint Stock Life Assurance Co.* (*t*); *Merchant Banking Co. of London* v. *Merchants' Joint Stock Bank* (*u*); *London and County Banking Co.* v. *Capital and Counties Bank* (*x*); *Australian Mortgage Land and Finance Co.* v. *Australian and New Zealand Mortgage Co.* (*y*).

On the other hand, an injunction was granted on this ground in *Accident Insurance Co.* v. *Accident, Disease and General Insurance Corporation* (*z*); and would have been granted in *Guardian Fire and Life Assurance Co.* v. *Guardian and General Insurance Co., Limited* (*a*), had not the defendants agreed to change their name.

"Subsisting society."

The words "subsisting society" mean a society subsisting at the date of the application to register, and not only a society subsisting at the time of the passing of the Act (*b*).

(*q*) Treasury Regulations, 1884, r. 7, App. B., *infra*.
(*r*) 33 Beav. 548; 33 L. J. Ch. 741; 10 Jur. N. S. 967; 12 W. R. 783; 10 L. T. 448.
(*s*) 32 L. J. Ch. 664; 9 Jur. N. S. 843.
(*t*) 17 L. J. Ch. 37.
(*u*) 9 Ch. D. 560; 47 L. J. Ch. 828; 26 W. R. 847.
(*x*) 9 Ch. D. 567.
(*y*) W. N. (1880) 6.
(*z*) W. N. (1884) 176.
(*a*) 50 L. J. Ch. 253; 43 L. T. 791.
(*b*) *In the Matter of the Fourth South Melbourne Building Society*, 9 Vict. L. R. Eq. 54.

Where a trade union divided into two sections and each applied to register in the name by which the society had hitherto been known, the registrar was held to have acted rightly in refusing to register either (*b*).

Change of name.

As to the power of a society to change its name, see *infra*, p. 41.

Certificate of registrar not conclusive as to legality of rule.

The certificate of the registrar is not conclusive as to the legality of a rule (*c*). In his judgment in *Laing* v. *Reed* (where the question was as to the legality of a rule conferring a limited borrowing power on the society) Lord Hatherley, L. C., said, "With regard to the argument in this case, two points have been raised by those who contest the decision of the Vice-Chancellor; the one is that the rule is not *ultra vires*, regard being had to the Act; and the other is, that if there be a doubt upon that subject (as I understand the argument, it can hardly be put higher), the certificate of the barrister, who is competent to determine the legal question, should be adopted by us as conclusive. We cannot adopt any possible view of the certificate of the barrister in the particular case before us which would render it conclusive. It could not be contended, and it hardly was contended, that if the matter was plainly *ultra vires*, any certificate of the barrister could prevent the Court from interfering so as to prevent an abuse of power on the part of persons who have certain privileges conferred on them by parliament. If there were such an abuse of power the certificate of the barrister could have no effect whatever. The words which render him competent to decide upon the legality of the instru-

(*b*) *R.* v. *The Registrar of Friendly Societies*, L. R. 7 Q. B. 741; 41 L. J. Q. B. 366; 27 L. T. 229.

(*c*) *Laing* v. *Reed*, 21 L. T. 83; on appeal, 5 Ch. 4; 39 L. J. Ch. 1; 18 W. R. 76; 21 L. T. 773; 34 J. P. 134; *Kelsall* v. *Tyler*, 11 Ex. 513; 25 L. J. Ex. 153; 26 L. T. (O. S.) 226; 20 J. P. 150; *R.* v. *Davis*, W. N. (1866), 24; 14 W. R. 329; 13 L. T. 629; 30 J. P. 116; and see also the judgment of Lindley, L. J., in *Cullerne* v. *London and Suburban General Permanent Building Society*, 25 Q. B. D. p. 488; 59 L. J. Q. B. 525; 39 W. R. 88; 63 L. T. 511; 6 Times L. R. 214, 449; 55 J. P. 148, *post*, p. 37.

ments submitted to him, clearly do not apply to such a case as that before us. They probably apply to regulations affecting the engagements between the members themselves; such, for instance, as in what cases the majority might bind the minority. But if the law prohibited the raising of these sums of money, I apprehend that no certificate of the barrister could avail." And see also *Davie* v. *Colinton Friendly Society* (*d*), where it was held in a case in Scotland under a similar Act that the registrar's certificate, though necessary to the validity, was not conclusive of the legality of the rules, or alteration of rules, certified.

Secus, as to regularity of passing.

But though the certificate of the registrar is not conclusive as to the *legality* of a rule, it is undoubtedly so as to the regularity of the proceedings by means of which the rule was passed. This was decided in *Dewhurst* v. *Clarkson* (*e*), where it was held by the Court of Queen's Bench, Erle, J., *diss.*, that where an amendment of the rules of a friendly society had been certified, such amendment was valid, although there had been no resolution of the society in compliance with the 10 Geo. 4, c. 56, s. 9, or with the rules of the society incorporating that section, and this decision was recently followed by the Court of Appeal in the case of an incorporated society (*f*). "With regard to the effect of the certificate of registration," said Fry, L. J. (*g*), "I agree that it is conclusive as to the validity of the rules. It is difficult to find any intelligible reason for requiring such a certificate, unless it were intended to furnish proof that the rules had been duly passed. There are no words in the Act making the certificate *primâ facie* evidence only. The Act of 1874, which we have to construe, was passed many years after the decision in *Dewhurst* v. *Clarkson*, and after

(*d*) 9 R. 96; 8 Sc. L. R. 100; 9 Macp. 96; 43 Sc. Jur. 54.

(*e*) 3 El. & B. 194; 23 L. J. Q. B. 247; 18 Jur. 693; 23 L. T. (O. S.) 109; 2 C. L. R. 1143; 18 J. P. 535.

(*f*) *Rosenberg* v. *Northumberland Building Society*, 22 Q. B. D. 373; 37 W. R. 368; 60 L. T. 558; 5 Times L. R. 265.

(*g*) 22 Q. B. D. p. 380.

that decision had been acted on in numerous cases; and I can see no indication of any intention on the part of the legislature to alter the law there laid down. I think, therefore, we are bound by that case." See also *Pare* v. *Clegg* (*h*), where it was held that the certificate of the barrister must be considered conclusive as to the character of the society in question—a friendly society of a peculiar description.

Certifying rule previously struck out.

In another case one of the rules of a building society authorized the board to issue deposit or paid-up shares for 30*l.* each at 5 per cent. interest with the right of withdrawing the whole or part of the deposit upon notice in preference to all other shares. This rule was struck out by the barrister, but nevertheless the directors printed and acted upon it by issuing shares accordingly. Some years afterwards they amended this rule by altering 30*l.* into 1*l.*, and the amendment was certified by the barrister; and those who had taken 30*l.* shares exchanged them for 1*l.* shares, and others who had not before held paid-up shares took up shares of the new issue. The society was ordered to be wound up. It was held that the effect of the barrister's certificate was to make the rule which had been struck out a valid rule again, but altered by 1*l.* being substituted for 30*l.*; and that the holders of these shares, whether they became such before or after the amendment was certified, and whether they had given notice of withdrawal or not, must be paid in preference to the unadvanced members (*i*).

(*h*) 29 Beav. 589; 30 L. J. Ch. 742; 7 Jur. N. S. 1136; 9 W. R. 795; 4 L. T. 669; 26 J. P. 53.

(*i*) *Murray* v. *Scott*, 9 App. Cas. 519; 53 L. J. Ch. 745; 33 W. R. 173; 51 L. T. 462, affirming on this point *S. C.* below, *nom. Re Guardian Permanent Benefit Building Society*, 23 Ch. D. 440; 52 L. J. Ch. 857; 32 W. R. 73; 48 L. T. 134.

CHAPTER V.

THE PURPOSES AND POWERS OF A BUILDING SOCIETY.

A. *Incorporated Societies.*

Object of incorporated society.

THE object of a building society established under the Act of 1874 is to raise by the subscriptions of the members a stock or fund for the purpose of making advances to members out of the funds of the society upon security of freehold, copyhold, or leasehold estate by way of mortgage. The society may, so far as necessary for this purpose, hold land with the right of foreclosure, and may also from time to time raise funds by the issue of shares of one or more denominations, either paid up in full or to be paid by periodical or other subscriptions, and with or without accumulating interest, and may repay such funds when no longer required for the purposes of the society. Any land, however, to which it may become absolutely entitled by foreclosure, or by surrender, or other extinguishment of the right of redemption, must, as soon afterwards as may be conveniently practicable, be sold or converted into money (*a*).

Security for advances by the society to members.

A building society must confine itself strictly to its proper business as thus defined, and if the directors depart from this—if, for instance, they attempt to convert the society into a land society, or make loans on security of a kind not authorized by the Act—they will be guilty of a breach of duty, and will be liable for any loss that may

(*a*) Building Societies Act, 1874, s. 13.

result. Thus, an advance to a member on the security of his shares in the society is plainly *ultra vires*, and directors who make such an advance are personally responsible for the consequences: see *Cullerne* v. *London and Suburban General Permanent Building Society* (*b*). In that case, the directors passed a resolution authorizing advances to members on the security of their shares in the society, in which resolution the plaintiff, who was a member of the board, concurred. They then made an advance to a member, in accordance with the resolution, which resulted in a loss, but the plaintiff was no party to the making of the advance. The Court of Appeal, though holding that the plaintiff was not liable, inasmuch as the real cause of the loss was the advance and not the resolution—the resolution being only a *causa sine quâ non*, and not the *causa causans*—were clear that the advance on such a security was improper. Lindley, L. J., who delivered the judgment of the Court, said:—"On looking carefully at the statutes by which these societies are governed, viz., 6 & 7 Will. 4, c. 32, s. 4, and the previous statutes there referred to, viz., 10 Geo. 4, c. 56, ss. 2, 13, 30, and 31, and 4 & 5 Will. 4, c. 40, s. 9, it certainly does appear that building societies can only advance money on the security of landed property, freehold, copyhold, or leasehold. The later Act, 37 & 38 Vict. c. 42, ss. 13 and 25, is to the same effect, except that the public funds are added. The 8th rule must be construed with reference to these enactments, and if it authorize advances on other securities, or on no security, it must to that extent be regarded as contrary to law and invalid. The resolutions founded upon that rule, and authorizing advances other than on the security mentioned in the statutes, must also be treated as of no validity. No director, therefore, who has in fact advanced money of the

(*b*) 25 Q. B. D. 485; 59 L. J. Q. B. 525; 39 W. R. 88; 63 L. T. 511; 6 Times L. R. 214, 449; 55 J. P. 148.

society upon any other security than land, can avail himself either of the rule or of the resolutions as a defence to an action by the society for the restitution of the money so advanced."

Collateral security.

The mere fact, however, that personal estate is given as collateral security for an advance will not necessarily vitiate the whole loan, though the propriety of the transaction must be tested as if no such ingredient entered into it: see *Sheffield and South Yorkshire Permanent Building Society* v. *Aizlewood* (*c*). There the rules provided that advances might be made on (*inter alia*) "legal or equitable mortgage of freehold, copyhold, or leasehold property for such periods and at such rate of interest as the board may from time to time approve." The directors made an advance upon two securities, the principal of which was a second mortgage of a leasehold colliery, taking at the same time as collateral security a charge upon certain beneficial interests under a trust of personal estate. It was argued that the inclusion of these latter vitiated the whole loan so as to make the directors liable for the very heavy loss in which the transaction finally resulted, but Stirling, J., held that this was not so. "If this contention," said the learned judge, "were well founded, then it would seem to follow that the inclusion in a building society's mortgage of a personal covenant by the mortgagor for repayment of the advance, and reliance placed by the officers of the society on the solvency of the mortgagor, might equally vitiate any transaction of which those were elements. Yet it was not disputed in argument, and in my judgment properly, that a building society making an advance to a member on the security of freehold, copyhold, or leasehold estate, might take from him a personal covenant for payment of what might be due from him to the society; and I think that the officers of the society might,

(*c*) 44 Ch. D. 412; 59 L. J. Ch. 34; 62 L. T. 678; 6 Times L. R. 25.

to a certain extent, and for certain purposes, rely on the solvency of the mortgagor. For example, an action on the covenant of a solvent borrower affords an effectual and comparatively speedy and inexpensive mode of recovering what is due, and may be the means of avoiding the delay, costs, and liability incident to remedies (such as foreclosure, sale, or entry into possession) available only against the subject-matter of the security. If the circumstances of the borrower are such that his personal covenant is without value, the building society may, in my opinion, secure a like advantage by means of the personal guarantee of a third party, or a charge on some readily available pure personal estate. The benefit so obtained must, however, be purely collateral, and the validity or propriety of the transaction is to be tested as if no such ingredient entered into it. If there be no freehold, copyhold, or leasehold estate comprised in the security, or if the estate so comprised be merely nominal, or its value out of all proportion to the amount advanced, the transaction is beyond the powers of the society, and invalid; but where, as here, the borrower offers as security such estate to a substantial extent, an advance is within the powers conferred by the Act of 1874, and the question for the officers of the society to determine is what amount may properly be advanced, and that question they must decide having regard solely to the nature and value of the freehold, copyhold, or leasehold estate offered to them, and without reference to the solvency of the borrower or the worth of any personal estate he may be willing to throw in by way of security."

Statutory powers of the society.

In carrying on its business, the society and its officers will, of course, be mainly guided by the rules, which must specify the purposes to which its funds are to be applied, and must also provide for the various other matters mentioned in sect. 16 of the Act of 1874, to which reference has already been made: see *ante*, p. 27. But, in addition

to this, the Act itself further confers upon every incorporated society a variety of powers and privileges of which it may avail itself in the prosecution of its objects, at the same time imposing upon it certain restrictions. These will now be noticed, reserving, however, the important question of the mode of settling disputes between a society and its members for separate consideration: see *infra*, Chap. IX.

Buildings may be purchased or leased for the purpose of conducting business of the society.

The society may purchase, build, hire, or take upon lease any building for conducting its business, and may adapt and furnish the same, and may purchase or hold upon lease any land for the purpose only of erecting thereon a building for conducting the business of the society, and may sell, exchange, or let such building, or any part thereof (*d*). Beyond this, however, the society has no power to hold land, and all land acquired by foreclosure, surrender, or other extinguishment of the right of redemption, must be sold as soon as can conveniently be done (*e*).

Change of chief office.

Prior to 1877, a change of the chief office necessitated an alteration of the rules, but under the Act of that year any society may change its chief office in the manner its rules direct, or if the rules contain no such direction, then at a general meeting of the society, without altering the rules; nor will the provisions of sect. 18 of the Act of 1874 (as to alteration of rules) apply to such change (*f*), but notice of the change, in the Form Y. prescribed by the Treasury Regulations (*g*), must be given by the secretary of the society to the registrar within seven days after the change. The notice is registered, and a certificate of registration given by the registrar, in the form prescribed by the statute (*h*).

Fee.

A fee of 2*s*. 6*d*. is payable for the certificate of change of office (*i*).

(*d*) Building Societies Act, 1874, s. 37.
(*e*) *Ibid*. s. 13.
(*f*) Building Societies Act, 1877, s. 2.
(*g*) Treasury Regulations, 1884, r. 24, Appendix B. *infra*.
(*h*) Building Societies Act, 1877, s. 2.
(*i*) Treasury Regulations, 1884, r. 25, Appendix B. *infra*.

Change of name.

The society is also at liberty to change its name, but this can only be done by resolution of three-fourths of the members present at a meeting called for the purpose, and the new name must not be identical with that of any society previously registered and still subsisting, or so nearly resembling the same as to be calculated to deceive, unless such subsisting society is in course of being terminated or dissolved, and consents to such registration. Notice of the change of name must be sent to the registrar and registered by him, and he will give a certificate of registration (*j*).

As to identity or similarity of names, see *ante*, p. 31.

Form of notice.

The notice to be given to the registrar must be in the form G. annexed to the Treasury Regulations, and must be accompanied by a statutory declaration in the form H.; and the registrar, before issuing a certificate of registration of change of name, is bound to ascertain that there is no such identity or resemblance of name as is mentioned in sect. 22, and in the event of such identity or resemblance may require the society desiring to change its name to satisfy him that such previously registered society is not subsisting, or if subsisting, that it is in course of being terminated or dissolved, and consents to such registration (*k*).

Name.

No change of name can be registered unless the new name ends with the words "Building Society"; and the registrar may refuse to allow the retention, in the name of any society which seeks to change its name, of any words implying that the society is other than a building society (*l*).

Form of certificate.

The certificate of registration of a change of name is in the form given in the Schedule to the Building Societies Act, 1877.

(*j*) Building Societies Act, 1874, s. 22.

(*k*) Treasury Regulations, 1884, r. 8, Appendix B. *infra*.

(*l*) *Ibid.* r. 7.

Fee.

A fee of 10*s.* is payable for the certificate of registry of a change of name (*m*).

A change of name does not affect any right or obligation of the society, or of any member thereof, or other person concerned (*n*).

Alteration of rules.

The society may alter its rules from time to time as may be thought expedient, and this important subject is dealt with by sect. 18 of the Act of 1874, which is as follows:—

"Any society under this Act, certified previously to the passing of this Act, may alter or rescind any rule or make any additional rule by the vote of three-fourths of the members present at a special meeting called for the purpose, of which meeting notice, specifying the proposed alteration, rescission, or addition shall be given to the members in the manner provided by the rules of the society, or in the absence of such rules by letters sent through the post seven days previous to such meeting; and any society hereafter established may alter or rescind any rule, or make an additional rule, in the manner its rules direct; and every society under this Act altering or rescinding any rule, or making an additional rule, shall forward two copies of every resolution for rescission of a rule, and of every alteration of or addition to its rules, signed by three members and the secretary, and a statutory declaration of an officer of the society that the provisions of this section have been complied with, to the registrar, who, if he find that such alteration, addition, or rescission is in conformity with this Act, shall return one of the copies to the secretary or other officer of the society with a certificate of registration, and retain and register the other copy" (*o*).

This section, it will be observed, divides itself into three parts. First, it provides how a society under the Act, *but*

(*m*) Treasury Regulations, r. 25. s. 22.
(*n*) Building Societies Act, 1874, (*o*) *Ibid.* s. 18.

certified previously to the passing thereof, may alter its rules. Secondly, it provides how a society *established after* the passing of the Act may alter its rules. Thirdly, it directs that *every society under the Act*, whenever established, must on altering or adding to its rules send certain documents to the registrar in order that the alteration may be registered.

Partial and complete alterations.

The alteration may be either—

(a.) A partial alteration, consisting of the addition of a new rule or part of a rule or rules to the existing rules, or of the substitution of a new rule or part of a rule or rules for any of the existing rules, or of a rescission of any of the existing rules or any part thereof without any substitution, or of more than one or all of those modes; or,

(b.) A complete alteration, consisting of the substitution of an entire set of rules for the existing set of rules (*p*).

Partial alteration.

An application for the registration of a partial alteration of rules must be made by three members and the secretary of the society, and must be made in the Form D. annexed to the Treasury Regulations, and must be accompanied by a statutory declaration in the Form E. annexed thereto, and by a printed copy of the existing rules, and by the following documents:—

(a.) If the partial alteration consists of the addition or substitution of a new rule or part of a rule or rules, two copies of such rule or part of a rule or rules, each copy being marked Y. and signed by each of the applicants.

(b.) If the partial alteration consists of the rescission of any of the rules without any substitution, two copies of the resolution for such rescission, each copy being marked Y. and signed by each of the applicants.

(*p*) Treasury Regulations, 1884, r. 3, Appendix B. *infra*.

The registrar, before registering a partial alteration of rules, must ascertain that it is in conformity with the Building Societies Acts (*q*).

Complete alteration.

An application for the registration of a complete alteration of rules must be made by three members and the secretary of the society, and must be in the Form F. annexed to the Treasury Regulations, and must be accompanied by a statutory declaration in Form E. annexed thereto, and by a printed copy of the existing rules and by two printed copies of the new rules, each copy being marked Z. and signed by each of the applicants; and the registrar, before registering the new set of rules, must ascertain that it provides for all matters which, by sect. 16 of the Act of 1874, are to be provided for by rules, and is in conformity with the Building Societies Acts (*r*).

The certificate of registry of an alteration of rules will be delivered to the applicants attached to one of the copies of the alteration (*s*).

Fee.

The fee for the certificate of registry of an alteration of rules is ten shillings (*t*).

Sinclair v. *Mercantile Building Society.*

By the rules of a building society prior to January, 1882, unadvanced members were entitled on withdrawal to receive back all instalments paid by them to the society with interest at 4 per cent., but without receiving any of the profits which had been allocated to their shares. In January, 1882, the society passed the following rules:—"15. Members may withdraw their shares on which no advances have been granted, with one half of the profits allocated thereon till the 31st day of January preceding repayment, and interest on said instalments for the period between the last-named date and said repayment, at a rate per annum equal to one-half of the profits allocated for the previous financial year, on giving one month's written notice to the

(*q*) Treasury Regulations, 1884, r. 4, Appendix B. *infra.*
(*r*) *Ibid.* r. 5.
(*s*) *Ibid.* r. 6.
(*t*) *Ibid.* r. 25.

manager. . . . Such repayments to withdrawing members holding shares subscribed for prior to 31st January, 1881, shall be under deduction of 15 per cent. of the instalments due on, and the profits allocated to, said shares as at last-named date." "17. The books are to be balanced, and the profits or losses declared at the end of January in each year. At the close of the years during which there have been profits declared, 5 per cent. thereof shall be carried to the reserve account to meet contingent losses, and the balance allocated amongst the shares in proportion to the instalments due thereon, each member's profit being credited to his account, and at the end of his pass-book. At the close of the year during which there have been losses declared, these shall be allocated amongst the shares, each member's loss being debited to his account, and at the end of his pass-book, in the proportion aforesaid." A shareholder who had been a member since 1874, in March, 1882, gave notice of withdrawal under the old rules, maintaining that the new rules 15 and 17 were *ultra vires*. The Court of Session held that under the circumstances the member was barred by acquiescence from disputing the validity of r. 15, and that r. 17 was not *ultra vires* (*u*).

As to how far an advanced member is bound by an alteration of rule, see *infra*, p. 156, and cases there cited.

Copy of rules to be supplied.

The society is bound to supply a printed copy of its rules, with a copy of the certificate of incorporation appended, to any person who requires it, and may charge for every such printed copy of rules a sum not exceeding one shilling.

Printed copy of rules to be evidence.

A printed copy of the rules, certified by the secretary or other officer of the society to be a true copy, will, in the absence of any evidence to the contrary, be received as evidence of the rules (*x*).

Investment

The Act of 1874 authorizes every society from time to

(*u*) *Sinclair* v. *Mercantile Building Investment Society*, 12 R. 1243; 22 Sc. L. R. 820.

(*x*) Building Societies Act, 1874, ss. 17, 20.

of surplus funds.

time, as its rules permit, to invest any portion of its funds not immediately required for its purposes, upon real or leasehold securities, or in the public funds, or in or upon any parliamentary stock or securities, or in or upon any stock or securities payment of the interest on which is guaranteed by authority of parliament, or, in the case of terminating societies, with other societies under the Act; and for the purpose of investments in the public funds, or upon security of copyhold or customary estate, the society, or the board of directors or committee of management, may from time to time appoint and remove trustees (*y*).

Trust Investment Act, 1889, does not apply to building societies.

Funds invested in the names of trustees for the society, under the direction of the board, are not trust funds subject to the enlarged powers of investment conferred by the Trust Investment Act, 1889: see *In re National Permanent Mutual Benefit Building Society* (*z*). In that case a part of the funds of the society, not in use in advancing members, was invested, in the names of three trustees, in consols. A petition was presented to determine whether the consols might lawfully be sold out, and the proceeds invested in some of the securities mentioned in sect. 3 of the Trust Investment Act, 1889. The learned judge, North, J., was of opinion that the Trust Investment Act was not intended to alter the powers of building societies as regulated by sect. 25 of the Building Societies Act, 1874; that the funds of such a society were not "trust funds," nor were its trustees "trustees" in the sense in which those terms are used in the Trust Investment Act; and that the directors were not trustees having trust funds in their hands to invest within the meaning of the Act. The proposed investment could, therefore, not be made.

Interest "guaranteed by authority of Parliament."

India Three-and-a-half per cent. Stock, the interest on which is, by sect. 11 of the Act 36 & 37 Vict. c. 32, charged on the revenues of India, is not within the words "stocks or securities, payment of the interest on which is

(*y*) Building Societies Act, 1874, s. 25.

(*z*) 43 Ch. D. 431; 59 L. J. Ch. 403; 38 W. R. 475; 62 L. T. 596.

guaranteed by authority of Parliament," and consequently is not available for the investment of surplus funds of a building society (*a*).

Unauthorized investment.

Where the trustees of a friendly society advanced 300*l.* on a joint and several promissory note, this not being one of the modes of investment authorized by the Friendly Societies Act, 1875, the Court of Appeal held, reversing the decision of Fry, J., that though the loan was unauthorized, and was a breach of trust, there was nothing illegal in the transaction so as to prevent the trustees from recovering the money against the estate of one of the makers of the note who had died (*b*).

When trustees are absent, &c., registrar may order stock to be transferred.

When any person in whose name any stock transferable at the Bank of England or Bank of Ireland is standing, either jointly with another or others, or solely, as a trustee for any incorporated society, is absent from England or Ireland respectively, or becomes bankrupt, or files any petition or executes any deed for liquidation of his affairs by assignment or arrangement, or for composition with his creditors, or becomes a lunatic, or is dead, or if it be unknown whether such person is living or dead, the registrar, on application in writing from the secretary or other officer of the society and three members of the board of directors or committee of management, and on proof satisfactory to him, may direct the transfer of the stock into the name of any other person or persons as trustee or trustees for the society; and such transfer shall be made by the surviving or continuing trustee or trustees, and if there be no such trustee, or if such trustee or trustees shall refuse or be unable to make such transfer, and the registrar shall so direct, then by the accountant general or

(*a*) *In re National Permanent Mutual Benefit Building Society*, W. N. (1890) 117.

(*b*) *Re Coltman, Coltman* v. *Coltman*, 19 Ch. D. 64; 51 L. J. Ch. 3; 30 W. R. 342; 45 L. T. 392; see also *Hardy* v. *Metropolitan Land and Finance Co.*, 7 Ch. 427; 41 L. J. Ch. 257; 20 W. R. 425; 26 L. T. 407, reversing the decision of Romilly, M. R., 12 Eq. 386, cited *post*, p. 67.

deputy or assistant accountant general of the Bank of England or Bank of Ireland, as the case may be. The Governors and Companies of the Bank of England and Bank of Ireland respectively are indemnified for anything done by them or any of their officers in pursuance of this provision against any claim or demand of any person injuriously affected thereby (*c*).

Application to transfer stock.

An application to the registrar to direct a transfer of stock must follow as near as may be the Form I. annexed to the Treasury Regulations. It must be signed by the secretary or other officer of the society and three members of the board of directors or committee of management, and must be accompanied by a statutory declaration (also in a prescribed form) and by the certificate of the stock in respect of which the application is made. A draft copy on foolscap paper, written on one side only, of the proposed application and declaration must be submitted to the registrar before the application is made; and the registrar, before directing a transfer, may require further proof of any statement in the application. The registrar gives his direction in a specified form so framed as to suit the particular circumstances of the case; and the direction is then registered and delivered to the applicants endorsed with the word "Registered" and duly authenticated (*d*).

Fee.

A fee of one pound is payable on a direction to transfer stock (*e*).

As to copyholds.

Where any society is entitled in equity to any hereditaments of copyhold or customary tenure by way of mortgage, the lord of the manor of which the same are held is bound from time to time, if required by the society, to admit such persons, not more than three, as the society appoints, to be trustees on its behalf as tenants in respect of such hereditaments, on payment of the usual fines, fees,

(*c*) Building Societies Act, 1874, s. 26.

(*d*) Treasury Regulations, 1884, rr. 9—12, Appendix B. *infra*.

(*e*) *Ibid.* r. 25.

and other dues payable on the admission of a single tenant; or he may admit the society as tenant in respect of the same, on payment of such special fine, or compensation in lieu of fine, and fees as may be agreed upon (*f*).

Mortgages of copyholds.

It is not the practice for a mortgagee of copyholds to be admitted in the first instance, as upon admittance a fine becomes due to the lord. The mortgagee, however, incurs no risk by adopting this course, as the admittance when made relates back to the surrender, and he cannot therefore be prejudiced by the previous admittance of any subsequent surrenderee.

Societies may unite with others, or one society may transfer its engagements to another.

Two or more societies may unite and become one society, with or without any dissolution or division of the funds of such societies or either of them, or one society may transfer its engagements to another, upon such terms as may be agreed upon by three-fourths of the members holding not less than two-thirds of the whole number of shares of each of such societies present at general meetings respectively convened for the purpose. Notice in duplicate in the form prescribed by the Treasury Regulations of every such union or transfer must be sent to the registrar (*g*).

Notice of union or transfer.

On receiving notice of the union, the registrar returns one copy to the united society endorsed with the word "Registered," and duly authenticated, and registers the other copy; and on receiving notice of a transfer of engagements he returns one copy to the transferee society similarly endorsed and authenticated, and registers the other copy (*h*).

Fee.

A fee of ten shillings must be paid for registry of a union or transfer (*i*).

Registration of union of societies or of transfer of engagements operates as

The registration by the registrar of the notice of the union of any societies, or of the transfer of the engagements of any society to another society, operates as an effectual conveyance, transfer, and assignment, as at the

(*f*) Building Societies Act, 1874, s. 28.
(*g*) *Ibid.* s. 33.
(*h*) Treasury Regulations, 1884, rr. 18, 19, 26. Appendix B. *infra*.
(*i*) *Ibid.* r. 25.

effectual conveyance of funds and property of uniting societies to the united society or to transferee society.

date of the registration, of the funds, property, and assets of the society so uniting to the united society, or of the society transferring its engagements to the society to which such engagements may be transferred, as may be set forth in the instrument of union or transfer of engagements, without any conveyance, transfer, or assignment whatsoever, except in the case of stocks and securities in the public funds of Great Britain and Ireland, and estates in copyhold or customary hereditaments the title to which cannot be transferred without admittance. No such union or transfer of engagements, however, will affect the rights of any creditor of either or any society uniting or transferring its engagements (*k*). There can be no legal union or transfer of engagements between an incorporated society and an unincorporated society, nor between a building society and a company.

Creditors.

Societies must make annual audits and statements of the funds to the members.

Once in every year, at least, the society must prepare an account of all its receipts and expenditure since the preceding statement, and a general statement of its funds and effects, liabilities and assets, showing the amounts due to the holders of the various classes of shares respectively, to depositors and creditors for loans, and also the balance due or outstanding on their mortgage securities (not including prospective interest), and the amount invested in the funds or other securities; and every such account and statement must be attested by the auditors, to whom the mortgage deeds and other securities belonging to the society must be produced, and such account and statement must be countersigned by the secretary or other officer. A copy of the account and statement must be sent to every member, depositor, and creditor for loans; another copy must be sent to the registrar within fourteen days after the annual or other general meeting at which it is

(*k*) Building Societies Act, 1877, s. 5; Building Societies Act, 1874, s. 33.

presented; and another copy must be suspended in a conspicuous place in every office of the society (*l*).

Penalties.

If any society formed since November 2nd, 1874, or any persons representing themselves to be an incorporated society commence business without obtaining a certificate of incorporation, or if any incorporated society—

(a) Makes default in forwarding to the registrar any returns or information required by the Act of 1874; or

(b) Makes default in inserting in any deposit book or acknowledgment, or security for loan, the matters required by sect. 15 of the Act to be inserted therein; or

(c) Makes a return wilfully false in any respect,

the person or persons by whom such business shall have been so commenced, or by whom such default shall have been made, or who shall have made such wilfully false return, will be liable for every day such business is so carried on, or for every such default or false return, upon summary conviction before justices, at the suit of the registrar, to a penalty not exceeding five pounds (*m*). This provision as to default in forwarding returns to the registrar is similar to that contained in sect. 27 of the Companies Act, 1862, as to which see *Gibson* v. *Barton* (*n*), *R.* v. *Newton* (*o*), *Edmonds* v. *Foster* (*p*), *Grosvenor Bank* v. *Boaler* (*q*), *In re Briton Medical and General Life Association* (*r*).

Default in forwarding returns.

The Friendly Societies Registry Office makes the following observations as to the returns from building societies:—

Returns from

The returns from building societies differ in several

(*l*) Building Societies Act, 1874, s. 40; and see *Holgate* v. *Shutt*, cited *post*, p. 68, as to the audit.

(*m*) Building Societies Act, 1874, s. 43.

(*n*) L. R. 10 Q. B. 329; 44 L. J. M. C. 81; 23 W. R. 858; 32 L. T. 396; 39 J. P. 628.

(*o*) 48 L. J. M. C. 77; 43 J. P. 351.

(*p*) 45 L. J. M. C. 41; 24 W. R. 368; 33 L. T. 690; 40 J. P. 151.

(*q*) 49 J. P. 774.

(*r*) 39 Ch. D. 61; 57 L. J. Ch. 874; 37 W. R. 52; 59 L. T. 134.

building societies.

respects from other returns collected by the registrar. (1) They are not made in any specific form, although for the convenience of societies a model form has been drawn up, which is forwarded on application. (2) They are not made up to any fixed date. (3) Proceedings for default in making them, or for making a false return, can only be taken against the secretary or other officer of the society.

The chief points to be noted respecting them are:—

(1) That they must comprise both an account of receipts and expenditure or cash account, and a general statement of funds and effects, liabilities and assets, or balance sheet; any document, therefore, which contains only one of these, or mixes the two in one, is not a return within the mean- of the Act;

(2) That in the balance sheet, the balance shown to be due must not include prospective interest. All premiums, bonuses, or commissions deducted or paid as a consideration for advances are of the nature of prospective interest, and should not therefore be taken account of as assets; but there is nothing to prevent a society from including such premiums, &c., in a separate profit and loss account, if it thinks it desirable to do so;

(3) Again, in societies which grant appropriations by ballot, and whose rules authorize the purchase of appropriations by the society, the money spent on such purchase should not appear as an asset on the balance sheet, since it is merely the redemption of a liability. It would be as reasonable for a man who has bought back his own acceptance to enter as an asset the money paid for the purpose.

The returns of building societies are kept by the registrar, but he is not required to register them.

Exemption from stamp duties.

No rules of any incorporated society, nor any copy thereof, nor any power, warrant, or letter of attorney granted or to be granted by any person as trustee for the society for the transfer of any share in the public funds standing in his name, nor any receipts given for any dividend in any public stock or fund, or interest of exchequer bills, nor any receipt, nor any entry in any book of receipt, for money deposited in the funds of the society, nor for any money received by any member, his executors, or administrators, assigns, or attorneys, from the funds of the society, nor any transfer of any share, nor any bond or other security to be given to or on account of the society, or by any officer thereof, nor any order on any officer for payment of money to any member, nor any appointment of any agent, nor any certificate or other instrument for the revocation of any such appointment, nor any other instrument or document whatever required or authorized to be given, issued, signed, made, or produced in pursuance of the Act, or of the rules of the society, are subject or liable to or charged with any stamp duty or duties whatsoever, but this exemption does not extend to any mortgage; mortgages, therefore, must be stamped in the ordinary way (*s*).

Exemption does not extend to mortgages.

"Receipt."

As to the meaning of the word "receipt," see *Attorney-General* v. *Phillips* (*t*), cited *post*, p. 71, where a receipt for rent was held liable to duty.

"Bond or other security."

As to the meaning of "bond or other security," see *Re Royal Liver Friendly Society* (*u*), cited *post*, p. 71.

Forged Transfers Act, 1891.

Under the provisions of the Forged Transfers Act, 1891 (*x*), the society may make compensation out of its funds for any loss arising from a transfer of any of its shares or securities in pursuance of a forged transfer, or of

(*s*) Building Societies Act, 1874, s. 41.

(*t*) 24 L. T. 832; 19 W. R. 1146.

(*u*) L. R. 5 Ex. 78.

(*x*) Forged Transfers Act, 1891, 54 & 55 Vict. c. 43, ss. 1, 3; amended by Forged Transfers Act, 1892, 55 & 56 Vict. c. 36.

a transfer under a forged power of attorney, and may exercise the other powers conferred by the Act.

The society is discharged by payment to a registered shareholder without notice that he is only a trustee (*y*).

Power to borrow money.

The power of an incorporated building society to borrow money depends on sect. 15 of the Act of 1874, which is in the following terms:—

"With respect to the borrowing of money by societies under this Act, the following provisions shall have effect:

(1.) Any society under this Act may receive deposits or loans, at interest, within the limits in this section provided, from the members or other persons, or from corporate bodies, joint stock companies, or from any terminating building society, to be applied to the purposes of the society:

(2.) In a permanent society the total amount so received on deposit or loan and not repaid by the society shall not at any time exceed two-thirds of the amount for the time being secured to the society by mortgages from its members:

(3.) In a terminating society the total amount so received and not repaid may either be a sum not exceeding such two-thirds as aforesaid, or a sum not exceeding twelve months' subscriptions on the shares for the time being in force:

(4.) Any deposits with or loans to a society under this Act, made before the commencement of this Act in accordance with its certified rules, are hereby declared to be valid and binding on the society, but no further deposits or loans shall be received by such society, except within the limits provided by this section:

(5.) Every deposit book or acknowledgment or security of any kind given for a deposit or loan by a

(*y*) *Nolloth* v. *Simplified Building Society*, 34 W. R. 73; 53 L. T. 859; 2 Times L. R. 97.

society, shall have printed or written therein or thereon the whole of the fourteenth and fifteenth sections of the present Act" (*z*).

Limits of borrowing power:—

This section, it will be noticed, confers upon all societies under the Act a power to borrow money within certain prescribed limits. In the case of a *permanent* society the sum lent must not exceed two-thirds of the amount for the time being secured to the society by mortgages from its members; in the case of a *terminating* society it may be either (1) a sum not exceeding such two-thirds, or (2) a sum not exceeding twelve months' subscriptions on the shares for the time being in force. In the case of a society established after the 2nd of November, 1874, the rules must state whether the society intends to avail itself of the borrowing powers contained in the Act, and if so, within what limits, not exceeding those prescribed by the Act (*a*); and the same rule applies in the case of a complete alteration of the rules of a society previously established (*b*).

In permanent society;

In terminating society.

The limit prescribed by the rules cannot be exceeded.

Whichever of the two alternative limits allowed by sect. 15 the rules of a terminating society adopt, the directors will be bound by; and if they exceed such limit they will be personally liable for the excess, even though the borrowing be not in excess of the other alternative limit allowed by sect. 15 (*c*).

"Amount for the time being secured to the society by mortgages from its members."

In ascertaining the "amount for the time being secured to the society by mortgages from its members," within the meaning of sub-sect. 2, such amount is not to be confined to the amount of principal secured, but covers all sums due on the members' securities at the time of the loans to the society, whether for principal, or interest, or fines, or otherwise, and all instalments not then accrued due, but

(*z*) Building Societies Act, 1874, s. 15.

(*a*) *Ibid.* s. 16, sub-s. 2.

(*b*) Treasury Regulations, 1884, r. 5, Appendix B. *infra.*

(*c*) *Looker* v. *Wrigley*, *Leigh* v. *Wrigley*, 9 Q. B. D. 397; 46 J. P. 758; and see Building Societies Act, 1874, s. 43, *post*, p. 57.

secured by the mortgage and outstanding (*d*). It also includes moneys secured to the society by mortgages from its members, though not advanced to them in respect of their shares, but not, of course, moneys secured to the society by mortgages from persons who have borrowed money from the society without being members (*e*).

Amount borrowed.

In ascertaining the limits of the borrowing power, the total amount borrowed must be included, without regard to the source from which it was obtained (*f*).

Overdrawing banking account is borrowing.

A loan to a society from its bankers secured by deposit of title deeds and made by allowing the society to overdraw its account is a "loan" within sect. 15 (*g*). A distinction has been taken in some cases between overdrawing a banking account, or (as it is called) "taking advantage of banking facilities," and other kinds of borrowing (*h*), but this distinction is now exploded.

Sub-sect. 5 is directory only.

The enactment in the fifth sub-section is directory only, and non-compliance with it does not affect the validity of any security given for a loan (*i*).

Where a depositor lent money to a building society upon the terms, in writing, that the sum lent should be repayable after the lender had given notice of his intention to withdraw it, and that no money would be paid out of the society except on production, by the lender personally or by some one with his written authority, of a loan pass-book given to him when the loan was made, it was held that the condition as to the production of the book was a

(*d*) *Neath Building Society* v. *Luce*, 43 Ch. D. 158; 59 L. J. Ch. 3; 38 W. R. 122; 61 L. T. 611; 6 Times L. R. 13.

(*e*) *Ex parte Johnson and Greenwood*, 45 Ch. D. 463, 468; 59 L. J. Ch. 823; 39 W. R. 74; 63 L. T. 483.

(*f*) *Ibid.*

(*g*) *Looker* v. *Wrigley*, *Leigh* v. *Wrigley*, *ubi sup.*; *Cunliffe Brooks & Co.* v. *Blackburn Benefit Building Society*, 9 App. Cas. 857; 54 L. J. Ch. 376; 33 W. R. 309; 52 L. T. 225.

(*h*) *Re Cefn Cilcen Mining Co.*, 7 Eq. 88; 38 L. J. Ch. 78; 19 L. T. 593; *Waterlow* v. *Sharp*, 8 Eq. 501; 20 L. T. 902; both decided by Stuart, V.-C.

(*i*) *Re Guardian Permanent Benefit Building Society*, *Hawkins' Case*, 23 Ch. D. 440, 452; 52 L. J. Ch. 857; 32 W. R. 73; 48 L. T. 134; cited *ante*, p. 15.

condition precedent to the liability of the society to repay the money; so that, until that condition had been complied with, the Statute of Limitations did not begin to run against the lender (*k*).

As to payment of sums not exceeding 50*l.* on the death of a depositor intestate without taking out letters of administration, see sect. 29 of the Act of 1874, *post*, p. 134.

Liability of directors for money borrowed in excess of borrowing power.

If any incorporated society receives loans or deposits in excess of the limits prescribed by the Act, the directors or committee of management of such society receiving such loans or deposits on its behalf will be personally liable for the amount so received in excess (*l*). The effect of this provision was recently considered by the Court of Appeal in the important case of *Cross* v. *Fisher* (*m*). The facts there were as follows:—The society was authorized by its rules to receive money on deposit, but not exceeding the usual two-thirds limit. The course of business authorized by the directors was that the secretary, Collison, gave a provisional receipt to the depositor, and then prepared a formal receipt, which was signed by two directors and countersigned by himself. The secretary received moneys on deposit in this way to an amount largely in excess of the prescribed limit, appropriating to his own use a great part of the money deposited, and managing the books of the society in such a way as to keep the directors in ignorance that the limit had been exceeded. In an action by a depositor against the directors to recover the amount of a deposit made after the limit of the borrowing powers had been reached, the Court held, affirming

(*k*) *Atkinson* v. *The Bradford Third Equitable Benefit Building Society*, 25 Q. B. D. 377; 59 L. J. Q. B. 360; 38 W. R. 630; 62 L. T. 857.

(*l*) Building Societies Act, 1874, s. 43.

(*m*) [1892] 1 Q. B. 467; 40 W. R. 265; 66 L. T. 448; 8 Times L. R. 220; 56 J. P. 372; 36 Sol. J. 198; affirming the decision below, 65 L. T. 114; and see *Looker* v. *Wrigley*, *Leigh* v. *Wrigley*, 9 Q. B. D. 397; 46 J. P. 758, cited *ante*, p. 55.

the decision of Mathew, J., that every director who was a member of the board when the deposit was received was personally liable for the amount so received. "The section," said Lord Halsbury, L. C., "deals with the case of the receipt, by a society constituted under the Act, of loans or deposits in excess of the limits prescribed by the Act, and purports to make the governing body personally liable for money so received. Let us see if the language used is to be limited as contended for by the appellants. It is said that, because the section speaks of the receipt by the directors or committee of management (which, I take it, is an alternative, in view of the fact that some societies have a board of directors and others a committee of management), this must be confined to such of the governing body as have in their individual capacity received the deposits. The first answer to this suggestion is that such a narrow construction would render the section inoperative. Directors do not receive in their individual capacity; they can only receive deposits through the society's ordinary channel of receipts, and they would receive excess loans or deposits in the same manner as others, in this case by the person who was authorized to receive on their behalf. The second observation which arises is, that if the construction contended for is to be placed on the section, one would expect to find words limiting its application to the governing body, 'or such one or more of them as shall have received such loans or deposits.' No such words are there, and although the liability is personal, the thing done is done on the authority of the governing body, and it is reasonable that the legislature should say that each member of the governing body should be liable for the act which that governing body had wrongfully permitted to be done. The thing contemplated is that the members of the governing body, either themselves and with knowledge, or by giving authority to others and without knowledge, have enabled that to be done which it was their duty

as the governing body to prevent." And in his judgment in the same case the Lord Justice Fry said :—

"The words of the last clause of the 43rd section of the Building Societies Act, 1874, begin with a statement of the event or contingency upon which the provisions of the section are to come into operation. The words are 'if any society under this Act receives loans or deposits in excess of the limits prescribed by this Act.' These words create this difficulty, that a society whose power to receive deposits is limited by the Act cannot as such receive money in excess of its borrowing powers. The meaning to be attached to this sentence must therefore be, that if money is received by somebody under such circumstances that, but for the limitation, it would have been properly received by the society, then the section is to come into operation, provided the money so borrowed be, in point of fact, in excess of the limits. The same observation applies to the operative part of the section—'the directors or committee of management of such society receiving such loans or deposits on its behalf.' The directors cannot receive money on behalf of the society in excess of its borrowing powers, and this, therefore, refers to directors who would have been recipients of money for the society if such receipt had been within the prescribed limits. This being so, two inquiries or matters of fact seem to me to arise; first, whether the money in question would have been money received by the society if it had not been restricted by the limits imposed on its borrowing powers; and secondly, a like question with regard to the board of directors. As to the first of these questions, the rules of the society provide that the board shall have power to borrow such sums of money as shall be from time to time required for the purpose of the society, and to give receipts for the same; and such receipts are to be in the name of the society, and are to be signed by two of the directors, and countersigned by the secretary. Now, that course was pursued. The board

issued advertisements, inviting persons to lend money to the society, and the board allowed Collison's to be the sole hand to receive the deposits that might be forthcoming in answer to such advertisements, and two directors from time to time signed the formal receipts, which were countersigned by Collison. Everything, therefore, was regular, except the excess of the moneys received over the limits prescribed by the Act. So far, then, the contingency provided for in the section is shown to have happened. Then as to the second inquiry. Have we before us directors who, within the meaning of the Act, have received this money on behalf of the society? It is to be observed that the section assumes that, whenever a society has received money in excess of its borrowing powers, there are directors or a committee of management who have received it on its behalf. These words are not part of the contingency mentioned in the section, but are part of the operative clause making them liable. Nevertheless it is, I think, obvious that, unless the directors can be said, within the meaning of the Act, to have received the money, they could not be made liable, because they would not answer the description of the persons referred to in that part of the section. Has this money been so received as that, if it had been within the borrowing powers, the lender was assured by the whole board of directors that the money had been received by the board? In regard to that question, I should apply the same rule as in the first case. The rules provide that the board may borrow; the board may give receipts; and those receipts are to be given by the signature of two of the members of the board. Everything prescribed by the rules was, so far as the lender knew, done by the board of directors in this case, and if they chose to delegate their duties, and to allow the secretary to receive the deposits and the receipts to be given in the form prescribed by the rules, so that, as between the society and the lender, the lender has done everything

which he can do, then in my opinion the result must be that the directors were persons who had received this money on behalf of the society. Therefore I think the two questions of fact must be answered in the affirmative; this was money received by the society; this was money received by the directors. In that case the directors are personally liable." The directors were therefore held liable under sect. 43, but the learned judge who tried the case below (Mathew, J.) was of opinion that they would have been equally liable on the ground of breach of warranty, quite apart from the statute (*n*).

B. *Unincorporated Societies.*

Object of unincorporated society.

The purpose of an unincorporated building society, as defined by the Act of 1836, is that of raising, by the monthly or other subscriptions of the members, a stock or fund for the purpose of enabling each member to receive out of the funds the amount or value of his share or shares to erect or purchase one or more dwelling-house or dwelling-houses, or other real or leasehold estate, to be secured by way of mortgage to the society until the amount or value of the share or shares be fully repaid, with interest, and all fines or other payments incurred in respect thereof (*o*).

Shares not to exceed 150*l.*

The shares must not exceed 150*l.* in value (*p*), though there is nothing to prevent persons from subscribing for more shares than one (*q*); and the subscriptions must not exceed 20*s.* per month per share.

Division of profits.

No member may receive from the funds of the society

(*n*) See *Cross* v. *Fisher*, 65 L. T. 114; and the cases of *Collen* v. *Wright*, *Richardson* v. *Williamson*, and *Chapleo* v. *Brunswick Building Society*, cited *post*, p. 81.

(*o*) 6 & 7 Will. 4, c. 32, s. 1; the grammar of this section is imperfect.

(*p*) 6 & 7 Will. 4, c. 32, s. 1.

(*q*) *Morrison* v. *Glover*, 4 Ex. 430; 19 L. J. Ex. 20; 14 L. T. (O. S.) 204; 14 J. P. 84; where Parke, B., said his *dictum* to the contrary in *Cutbill* v. *Kingdom*, 1 Ex. 494; 17 L. J. Ex. 177, was incorrect.

any interest or dividend by way of annual or other periodical profit upon his shares until the shares are realized or withdrawn (*r*).

Property of society is vested in trustees for the time being.

The property and assets of the society vest in the trustees for the time being without conveyance or assignment, except in the case of stocks and securities in the public funds, and the society sues and is sued in the name of the trustees. The trustees must, however, have the authority of the society for taking or defending any legal proceedings (*s*).

Power to make rules.

An unincorporated society may make rules for its government and guidance, as to the major part of the members assembled together shall seem meet, "so as such rules shall not be repugnant to the express provisions of this Act, and to the general laws of the realm" (*t*). As to the power to make rules conferred by these words, see the judgment of the Earl of Selborne, L. C., in *Agnew* v. *Murray* (*u*); the remarks of Giffard, L. J., in *Laing* v. *Reed* (*x*); and the judgment of Jessel, M. R., in *Re Guardian Permanent Benefit Building Society* (*y*). "The only real and true limit of the rule-making power, as to a matter not governed by the general law of the realm or by any express prohibition in the statute, must be that pointed out by Giffard, L. J.; the power cannot be so exercised as to make the society a thing different from a benefit building society, formed for the purposes and in the manner defined by the Act" (*z*). Any rule that is contrary to the Act is of course invalid; the Act expressly says, "so as such rules shall not be repugnant to the express provisions of this Act;" and even apart from this, no rule could

"Proper and wholesome rules and regulations."

(*r*) 6 & 7 Will. 4, c. 32, s. 1.
(*s*) 10 Geo. 4, c. 56, s. 21; see as to this, *post*, p. 112.
(*t*) 6 & 7 Will. 4, c. 32, s. 1.
(*u*) 9 App. Cas. p. 538; 53 L. J. Ch. 745; 33 W. R. 173; 51 L. T. 462.
(*x*) 5 Ch. 4; 39 L. J. Ch. 1; 18 W. R. 76; 21 L. T. 773; 34 J. P. 134.
(*y*) 23 Ch. D. 440; 52 L. J. Ch. 857; 32 W. R. 73; 48 L. T. 134.
(*z*) *Per* Lord Selborne, L. C., *Agnew* v. *Murray*.

obviate or get rid of the effect of a public Act of Parliament (*a*).

Rules must be entered in a book.

The rules must be entered in a book kept by an officer of the society appointed for the purpose, which must be open at all seasonable times for the inspection of the members. The rules are binding on the members and depositors, and a copy of the transcript of the rules, examined with the original and proved to be a true copy, is evidence of the rules (*b*).

Alteration of rules.

Of course, no original rules can now be framed for an unincorporated society, but existing rules may be altered or rescinded. This can only be done at a general meeting of the members, convened by public notice, written or printed, signed by the secretary or president or other principal officer or clerk in pursuance of a requisition by seven or more members, which requisition and notice must be publicly read at the two usual meetings held next before the general meeting for the alteration or repeal, or by a committee nominated for the purpose at a general meeting of the members convened as aforesaid, and with the concurrence and approbation of three-fourths of the members present at the meeting, or of three-fourths of the committee so appointed (*c*). The officers of the society are bound to summon a meeting of the members upon a requisition to that effect being duly made to them for this purpose; they have no discretion in the matter (*d*).

The mode of altering the rules is as follows:—

Two copies of the proposed alteration fairly written on

(*a*) *In re The Bristol Athenæum*, 43 Ch. D. p. 240; 59 L. J. Ch. 116; 38 W. R. 396; 61 L. T. 795; 1 Meg. 452; 6 Times L. R. 83.

(*b*) 10 Geo. 4, c. 56, ss. 7 and 8. In *R.* v. *Boynes*, 1 Car. & K. 65, it was held that to give evidence of the transcript of the rules of a benefit society enrolled at the office of the clerk of the peace, by proof of an examined copy of it, the witness who examined the copy with the transcript must prove that he examined the copy of *all* the rules with the transcript.

(*c*) 10 Geo. 4, c. 56, s. 9.

(*d*) *R.* v. *Oldham and United Parishes Insurance Society*, 21 L. J. Q. B. 1; 16 J. P. 149; *S. C. nom. R.* v. *Bannatyne*, 18 L. T. (O. S.) 74; overruling *R.* v. *Bannatyne*, 2 L. M. & P. 213; 20 L. J. Q. B. 210.

paper or parchment, signed by three members and countersigned by the clerk or secretary, must be sent to the registrar, accompanied by an affidavit by the clerk or secretary, or one of the officers of the society, that the provisions of the Act under which the rules of the society have been enrolled have been duly complied with (*e*). The registrar then ascertains whether the rules are in conformity with law and are calculated to carry into effect the intentions of the parties, advising with the clerk or secretary if required. If he is not prepared to certify the rules, he must point out in what respect they are repugnant to law or to the Acts, and on his definite refusal to certify, the society may submit the rule or rules in question to the court of quarter sessions, with the registrar's reasons in writing for rejection or disapproval of them, and the justices may then, if they think fit, confirm and allow such rules notwithstanding the registrar's rejection or disapproval (*f*).

If, on the other hand, the registrar is willing to certify, both copies are sealed with the seal of the central office (or signed, as the case may be, in Scotland or Ireland by the assistant registrar), and one copy is returned to the society and the other retained (*g*).

Fee. A fee of one guinea is payable to the registrar for every alteration of rules certified, unless a fee has already been paid in respect of the same rules within three years, or the alteration is sent accompanied by an affidavit of being a copy of any rules, alterations, or amendments of rules of any other society already enrolled. In the latter case, the registrar is bound to certify (*h*).

As to how far the certificate of the registrar is conclusive of the validity of a rule, see *ante*, p. 33.

Schedule of forms. The society may, in and by its rules, describe the forms of conveyance, mortgage, transfer, agreement, bond, or other instrument which may be necessary for carrying

(*e*) 4 & 5 Will. 4, c. 40, s. 4.
(*f*) 10 Geo. 4, c. 56, s. 5.
(*g*) *Ibid.*
(*h*) 4 & 5 Will. 4, c. 40, s. 6.

its purposes into execution, which forms must be specified in a schedule to be annexed to the rules (*i*).

Societies may alter place of meeting.

The society may alter their place of meeting whenever they may consider it necessary, upon giving notice in writing to the registrar, within seven days before or after removal, signed by the secretary or other principal officer and also by three or more of the members of the society. It cannot, however, remove its place of meeting out of the county in which, for the purposes of its business, it was originally established (*k*).

Place of meeting.

Where the officers of a friendly society took upon themselves to convene a general meeting of the society at Manchester, when according to the rules the place of business was at Liverpool, the Court of Queen's Bench held that new rules adopted at the meeting were entirely null and void (*l*).

Investment of surplus funds.

The surplus funds of the society may, with its consent, to be testified in manner directed by the rules, be from time to time laid out on real or heritable securities or heritable property (such securities being taken in the name of the treasurer or trustee for the time being), or invested in the public stocks or funds, or government securities, or in any of the chartered banks in Scotland, or in the bank of the Commercial Banking Company of Scotland, and not otherwise, in the name of the treasurer or trustee, with power to vary investments; and the dividends, interests, and proceeds arising from the moneys so laid out or invested must from time to time be brought to account by the treasurer or trustee, and applied for the use of the society according to the rules (*m*).

Savings banks.

Investments in any savings bank, or with the Commissioners for the Reduction of the National Debt, are expressly forbidden (*n*).

(*i*) 6 & 7 Will. 4, c. 32, s. 3.
(*k*) 10 Geo. 4, c. 56, s. 10; *R.* v. *Registrar of Friendly Societies*, 16 J. P. 613; 19 L. T. (O. S.) 182.
(*l*) *R.* v. *Tidd Pratt*, 6 B. & S. 672; 29 J. P. 388.
(*m*) 10 Geo. 4, c. 56, s. 13.
(*n*) 6 & 7 Will. 4, c. 32, s. 6.

Investment of surplus funds.

A building society under the old law may therefore invest its surplus funds in the purchase of real estate; though such a society will not be allowed to convert itself into a freehold land society by speculating in land beyond this limit (*o*).

In a recent case a building society from the outset abandoned its legitimate business and proceeded to act as a land society. The practice was for the society to purchase a large piece of land and divide it into lots of a convenient size; and any person who was desirous of purchasing a lot became a member of the society and took shares to the requisite amount, receiving a conveyance from the trustees as soon as his shares were paid up in full. It was understood, however, that these purchases were irregular, and accordingly two deeds of indemnity were prepared; one to the trustees of the society, and the other to the president and officers, and each member was required to execute these deeds on receiving his conveyance. For convenience' sake these conveyances were generally executed in batches, when several members had paid in full and were ready to take up their deeds. The society got into difficulties, and a winding-up order was made *after* one of the members had paid up his shares in full and the trustees had executed his conveyance, but *before* the conveyance had been handed over to him or he had executed the indemnity deeds. Under these circumstances the member applied to the Court for an order on the liquidator to hand over the conveyance. The liquidator claimed a lien on the property for the purchase-money which had been expended on it. Mr. Justice Stirling held, on the evidence, that the execution of the conveyance was conditional on the execu-

(*o*) *Grimes* v. *Harrison*, 26 Beav. 435; 28 L. J. Ch. 823; 5 Jur. N. S. 528; 33 L. T. (O. S.) 115; 23 J. P. 421; *Mullock* v. *Jenkins*, 14 Beav. 628; 21 L. J. Ch. 65; 18 L. T. (O. S.) 203; *Re Kent Benefit Building Society*, 1 Dr. & Sm. 417; 30 L. J. Ch. 785; 7 Jur. N. S. 1045; 9 W. R. 686; 4 L. T. 610; 25 J. P. 805. The power of an incorporated society to hold land is strictly limited; see *ante*, p. 40.

tion by the member of the indemnity deeds, and that as these had not been executed nothing passed by the conveyance. The learned judge held further that the purchase of the land by the society was wholly *ultra vires*, and that under the circumstances he could not authorise the liquidator either to hand over the conveyance or to permit the member to execute the deeds of indemnity, and that matters must therefore remain as they were (*p*).

A society may lend its surplus funds on real security to persons not members of the society (*q*); and of course may advance money on mortgage to one of its own members (*r*).

Where the directors of a building society had deposited money of the society with a finance company in a manner not authorized by the rules, the Court held that it was trust money in the hands of the company, and might be recovered accordingly (*s*). In that case the manager and directors of both concerns were practically the same persons, and after part of the money deposited had been repaid to the society, the company gave the manager a cheque for the balance, which he misappropriated. The trustees of the society, with the sanction of the directors, though they were not made parties, thereupon filed a bill against the company to recover the money, and it was held that they were entitled to do so, on the ground that the cheque was given to the manager as the agent of the company, and as he had never paid it over to the building society, the money was still in the hands of the defendants, and being trust money they were liable to repay it, whether they had notice of the breach of trust or not; and see also *Re Coltman* (*t*). In the ordinary sense of

(*p*) *Re North Staffordshire Working Men's Building Society, Ex parte Lever* (not reported).

(*q*) *Cutbill* v. *Kingdom*, 1 Ex. 494; 17 L. J. Ex. 177.

(*r*) *Morrison* v. *Glover*, 4 Ex. 430; 19 L. J. Ex. 20; 14 L. T. (O. S.) 204; 14 J. P. 84.

(*s*) See *Hardy* v. *Metropolitan Land and Finance Co.*, 7 Ch. 427; 41 L. J. Ch. 257; 20 W. R. 425; 26 L. T. 407.

(*t*) 19 Ch. D. 64; 51 L. J. Ch. 3; 30 W. R. 342; 45 L. T. 392, cited *ante*, p. 47.

the words, however, the funds of a building society are not trust funds (*u*).

Societies must make annual audits and statements of the funds to the members.

The rules must provide that the treasurers, trustees, stewards, or other principal officer shall, once in every year at least, prepare a general statement of the funds and effects of or belonging to the society, specifying in whose custody or possession such funds or effects shall be then remaining, together with an account of the various sums of money received and expended by or on account of the society since the publication of the preceding periodical statement. Every such periodical statement must be attested by two or more members of the society appointed auditors for that purpose, and countersigned by the secretary or clerk; and every member is entitled to receive from the society a copy of such periodical statement, on payment of such sum as the rules may require, not exceeding the sum of sixpence (*v*).

Audited accounts may be impeached on the ground of fraud.

In *Holgate* v. *Shutt* (*x*), one of the rules of the society provided that the accounts should be audited every year "by auditors appointed by the society," and that after the accounts had been audited and signed the treasurer should not be answerable for mistakes, omissions, or errors afterwards proved in the accounts. In an action by members against the treasurer, the Court held that though the audited accounts must be received as *primâ facie* evidence the rule did not prevent the members from impeaching the accounts on the ground of fraud. The plaintiffs then raised a further point, viz., that the accounts having been audited by one person only, who was not a member of the society, the accounts were not even *primâ facie* evidence for the defendant. The Court was of opinion that the accounts had not been audited in accordance with the rules, but held that the defendant was not precluded from showing

(*u*) *In re National Permanent Mutual Benefit Building Society*, 43 Ch. D. p. 434; 59 L. J. Ch. 403; 38 W. R. 475; 62 L. T. 596—North, J., cited *ante*, p. 46.

(*v*) 10 Geo. 4, c. 56, s. 33.

(*x*) 27 Ch. D. 111; 53 L. J. Ch. 774; 32 W. R. 773; 51 L. T. 433.

that the audited account ought to be treated as a settled account upon other grounds (*y*). In the course of his judgment, Fry, L. J., said:—"The 7th rule provides that 'The books of the secretary, vice-president, and treasurer shall be audited every twelve calendar months by auditors appointed by the society, and signed by such auditors to denote their accuracy in the secretary's book.' It appears to me to be plain that the auditors referred to in that passage must be the auditors pointed out by the statute of 10 Geo. 4, that is to say, there must be two auditors for every yearly audit, and those auditors must be members of the society. Now in the present case the audit was for years made by a single person, and that person was not a member of the society. It follows, in my judgment, that the audit has not been an audit in accordance with rule 7, or with any other rules of the society. It has been suggested that the general power given to the society of regulating their affairs by a majority covers this case. In my view it cannot override the express provisions of rule 7 and the provisions of the Act of Parliament."

Ratification of acts of directors.

Where the directors of a society which had no power to borrow had been allowed by its bankers to make large overdrafts secured by a lien on the society's deeds, it was held by the Court of Appeal that the fact that annual balance sheets showing the amounts due to the bankers had been sent to all the members of the society and adopted at the annual meetings, was no ratification of what the directors had done; for such ratification could not be implied from the members merely seeing and not questioning the accounts which had been sent them, and the acts of the directors being *ultra vires*, no ratification by the majority could even in general meeting bind the minority present, or any absent member (*z*).

(*y*) *Holgate* v. *Shutt*, 28 Ch. D. 111; 54 L. J. Ch. 436; 51 L. T. 673; 49 J. P. 228.

(*z*) *Blackburn Benefit Building Society* v. *Cunliffe Brooks & Co.*, 29 Ch. D. 902; 54 L. J. Ch. 1091; 53 L. T. 741.

Exemption from stamp duties.

No copy of rules, power, warrant or letter of attorney granted or to be granted by any person as trustee of any unincorporated society for the transfer of any share in the public funds standing in the name of such trustee, nor any receipts given for any dividend in any public stock or fund or interest of exchequer bills, nor any receipt, nor any entry in any book of receipt, for money deposited in the funds of any such society, nor for any money received by any member, his or her executors or administrators, assigns or attorneys, from the funds of such society, nor any bond nor other security to be given to or on account of any such society, or by the treasurer or trustee or any officer thereof, nor any draft or order, nor any form of assurance, nor any appointment of any agent, nor any certificate or other instrument for the revocation of any such appointment, nor any other instrument or document whatever required or authorized to be given, issued, signed, made, or produced in pursuance of the Act 10 Geo. 4, c. 56, is subject or liable to or chargeable with any stamp duty whatsoever (*a*).

Stamps on mortgages.

It was decided in *Walker* v. *Giles* (*b*) and *Barnard* v. *Pilsworth* (*c*), that mortgages to a building society came within the above provisions and were exempt from duty; and the same was held in *Thorn* v. *Croft* (*d*), by Wood, V.-C., who extended the decision to the case of mortgages to the society by persons not members of it.

Stamp Act, 1891, s. 89.

The Stamp Act, 1891 (*e*), s. 89 (January 1, 1892), now provides as follows, in substitution for 31 & 32 Vict. c. 124, s. 11 (July 31, 1868), to the same effect:—"The exemption from stamp duty conferred by the Act of the Session held in the sixth and seven years of King William the Fourth, chapter thirty-two, for the regulation of benefit building societies, shall not extend to any mortgage made

(*a*) 10 Geo. 4, c. 56, s. 37.

(*b*) 6 C. B. 662; 18 L. J. C. P. 323; 13 Jur. 588; 13 L. T. (O. S.) 209.

(*c*) 6 C. B. 698, n.; 18 L. J. C. P. 330, n.; 14 L. T. (O. S.) 132.

(*d*) 3 Eq. 193; 36 L. J. Ch. 68; 15 W. R. 54; 15 L. T. 205; 31 J. P. 356.

(*e*) 54 & 55 Vict. c. 39.

after the thirty-first day of July, one thousand eight hundred and sixty-eight, except a mortgage by a member of a benefit building society for securing the repayment to the society of money not exceeding five hundred pounds."

In *Williams* v. *Hayward* (*f*), a mortgage to a building society executed before the rules had been certified and deposited, though this was done subsequently, was held to be exempt from stamp duty.

Receipt.

In *Attorney-General* v. *Phillips* (*g*), a member mortgaged a cottage to the society to secure an advance. The society entered into possession, and received rent from the tenant of the mortgaged premises, for which they gave him a receipt in the following form :—

"Temperance Permanent Land and Building Society (enrolled as The Temperance Permanent Benefit Building Society).

"4, Ludgate Hill,

"No. 2667. "London, 15th Oct., 1870.

"Received of Mr. G. C. Knight twelve pounds, rent of premises, Barnhove Cottage, East Moulsey, due at Michaelmas, 1870.

"For the Trustees of the Society,

"£12. "Henry J. Phillips, *Secretary*."

The Court of Exchequer held that this was simply a receipt between landlord and tenant, and was liable to stamp duty.

"Bond nor other security."

In *Re Royal Liver Friendly Society* (*h*), a case on the construction of the Friendly Societies Act, 1855, s. 37, which is almost identical with the above provisions, except that the words "nor other security" are omitted after the word "bond,"—Martin, B., said :—"My impression is that the word 'bond,' which occurs in both the earlier and the present section, refers, not to a loan or investment of the society's funds in or upon bonds, such as the Harbour

(*f*) 22 Beav. 220; 25 L. J. Ch. 289; 1 Jur. N. S. 1128; 26 L. T. (O. S.) 134; 19 J. P. 788.

(*g*) 24 L. T. 832; 19 W. R. 1146.

(*h*) L. R. 5 Ex. 78; *S. C. nom. Trustees of the Royal Liver Friendly Society* v. *Commissioners of Inland Revenue*, 39 L. J. Ex. 37; 18 W. R. 349; 21 L. T. 721.

Bonds of the Mersey Docks, but to bonds given, whether with or without sureties, by clerks, agents to receive money, and others, as security for their duly accounting, or otherwise discharging, the functions of their office. That, I think, also, was the nature of the 'security' mentioned in the earlier Act [10 Geo. 4, c. 56]; but a more extensive meaning having been attributed to it, the word was afterwards omitted."

"Draft or order."

Where a building society paid withdrawing members the amounts due to them by drafts to bearer, and made half-yearly payments of interest to members of the society in respect of their shares by similar drafts, both were held liable to stamp duty (*i*). Kelly, C. B., in delivering judgment, said:—"The section of the Act which is relied on is sect. 37, which contains among the list of exempted instruments, 'draft or order;' it is necessary, therefore, to inquire what sort of drafts and orders are contemplated by the section. They must be drafts or orders 'required or authorized to be given, issued, signed, made, or produced, in pursuance of' the Act; and I think the words limit the drafts and orders mentioned to such as are drawn by an officer of the society for its purposes, or by a member upon the society, payable to himself only. The rules of the society evidently contemplate a payment to the member personally, on the production of his pass-book, and after its examination, and not a payment made on the draft of a member at a distance, and perhaps abroad, payable to the bearer, and passing from hand to hand with or without indorsement. Indeed, looking at the facts stated in the case, it may be doubted whether this is really a benefit building society at all; at all events this is not a transaction falling within the ordinary transactions of a building society, but is a transaction between banker and customer.

(*i*) *Att.-Gen.* v. *Gilpin*, L. R. 6 Ex. 193; 40 L. J. Ex. 134; 19 W. R. 1027.

The society has possessed itself of deposits amounting to more than one million pounds, which remain in its hands in the ordinary mode of banking business. A notice is required of a member's intention to withdraw his deposit, but on the expiration of the limited time, the member is entitled to withdraw either his completed share or shares of 30*l.*, or the whole or any part of his uncompleted shares. This is clearly a banking transaction, and not a transaction within the operations either of a benefit building society or a friendly society, or within the spirit and meaning of 10 Geo. 4, c. 56, or 6 & 7 Will. 4, c. 32."

Rules and transfers of shares.

The rules of unincorporated building societies and any transfer of shares in any such society, are also exempted from stamp duty (*k*).

Power to borrow money.

The right of an unincorporated society to borrow money, a point on which the Act of 1836 is silent, depends on the rules, which may (1) contain an unlimited power to borrow; or (2) may contain no power to borrow at all; or (3) may contain a limited power only. It will be convenient to consider these cases separately.

1. *Where the rules contain an unlimited power to borrow.*

Where the rules contain an unlimited power to borrow.

For a long time an opinion prevailed that, though a rule authorizing the directors to borrow money for the purposes of the society *to a limited extent* was good, a rule giving them an *unlimited* power to borrow for such purposes was illegal and void, as being contrary to the scope and intent of the statute (*l*). The House of Lords, however, subsequently decided, in *Agnew* v. *Murray* (*m*), that this idea

(*k*) 6 & 7 Will. 4, c. 32, s. 8.

(*l*) *Laing* v. *Reed*, 5 Ch. p. 8; 39 L. J. Ch. 1; 18 W. R. 76; 21 L. T. 773; 34 J. P. 134; *Hill's Case*, 9 Eq. 605; 39 L. J. Ch. 628; 18 W. R. 967; 22 L. T. 777; 34 J. P. 532; *Re Professional, Commercial, and Industrial Permanent Benefit Building Society*, 6 Ch. 856; 19 W. R. 1153; 25 L. T. 397; *Re Guardian Permanent Benefit Building Society, Calvert's Case*, 23 Ch. D. 440; 52 L. J. Ch. 857; 32 W. R. 73; 48 L. T. 134.

(*m*) 9 App. Cas. 519; 53 L. J. Ch. 745; 33 W. R. 173; 51 L. T.

was erroneous, and that a rule authorizing directors to borrow money for the purposes of the society, without any limit being expressed as to the amount, was perfectly good, and the loans contracted under it valid. In that case the 32nd rule of the society was as follows:—

"The trustees or directors for the time being of this society may, from time to time as occasion may require, borrow and take up at interest any sum or sums of money from the society's banker, or from any banker, or from any other person or persons; and any borrowed money shall be a first charge on the funds and property of the society. And in case the trustees or directors shall at any time give their joint and several promissory note or other security for money borrowed for and on behalf of the society, then and in such case the persons giving the security shall be indemnified by the society, and the funds and property of the society shall be held subject and liable to the repayment of the borrowed moneys, the borrowed moneys being always deemed a first charge on the society's funds and property." Under this rule the directors borrowed large sums for the proper purposes of the society, and deposited with the lenders, as security, the title deeds of properties which had been mortgaged to the society by advanced members. The society was ordered to be wound up. The House of Lords held that the rule was valid, and that the lenders were entitled in the winding-up to payment out of the assets after satisfaction of the creditors other than creditors for loans, and in priority to the claims of all shareholders or members.

It will be observed that this decision in terms postponed the lenders to the other creditors of the society. The question of priority as between these two classes of persons, however, was immaterial, as the claims of the creditors

462, reversing the decision of the Court of Appeal in *Calvert's Case*, from which *Agnew* v. *Murray* was in substance, though not in name, an appeal.

other than the loan creditors were of trifling amount, and had in fact been already paid with the consent of all parties, and the point therefore did not really arise. Had a decision been necessary, it is difficult to see on what ground creditors for loans, properly contracted in pursuance of the rules of the society, should not have been held as much entitled to payment as creditors on any other account.

Provision that borrowed moneys shall be a first charge.

As between the different loan creditors themselves, the House of Lords held in the above case that there could be no priorities, for that the true meaning of the rule under which the loans were contracted was that all the moneys borrowed under it were to have the benefit, equally and *pari passu*, of a first charge upon the general funds and property of the society, and that it would be inconsistent with this to allow the lenders to compete with each other by taking special securities upon particular properties; and see also to the same effect *Small* v. *Smith* (*n*), where the words of the rule were, "The sums so borrowed shall form a preferable charge against the funds, claims, and effects of the society."

Deposits.

In another case, the first rule of the society declared that it was established "for the purpose of raising by monthly subscriptions and deposits on loans a fund to make advances to members of the value of their shares, to enable them to erect or purchase one or more house or houses," &c.; and a subsequent rule provided that the directors should meet at specified times "for the purpose of conducting the business of the society." At a meeting of directors, it was resolved that the directors might receive deposits of money on debentures; and under that resolution they received loans from persons not otherwise members. On the society being wound up, it was held

(*n*) 10 App. Cas. p. 131; *S. C. nom. Shiell's Trustees* v. *Scottish Property Investment Society, in Liquidation*, 12 R. (H. L.) 14; 22 Sc. L. R. 139.

that the first rule sufficiently expressed the power to receive deposits on loan, and that the lenders were outside creditors, and entitled to be paid in priority to the members of all classes, including those who had given notice of withdrawal before the commencement of the winding-up (*o*).

Personal liability of members for money borrowed.

But no rule similar in its terms to those in the above cases would enable the directors to make the members of the society personally liable for the money borrowed. Thus, in *Murray* v. *Scott* (*p*), the Earl of Selborne, L. C., speaking of the rule as to borrowing, says: "It does not authorize the trustees or directors to pledge in any way the personal credit of any individual members of the society (unless, indeed, they think fit, by way of security only, to pledge their own); it expressly makes all borrowed money 'a first charge on the funds and property of the society,' of which the base is necessarily the total amount of the contributions of members; and the creditors can have no recourse except against such funds and property;" and see also the remarks of Lord Blackburn, 9 App. Cas. pp. 549, 550. If any rule did in terms purport to enable the directors to pledge the individual credit of the members to persons lending money to the society, the rule would to that extent be *ultra vires*, as being inconsistent with the nature of a building society under the Act (*q*).

2. *Where the rules contain no power to borrow.*

Where the rules contain no power to borrow.

An unincorporated society, however, has no power to borrow money unless its rules authorize it so to do (*r*);

(*o*) *Re Mutual Aid Permanent Benefit Building Society*, 29 Ch. D. 182; 54 L. J. Ch. 493; 33 W. R. 575; 52 L. T. 406; affirmed on appeal, 30 Ch. D. 434; 55 L. J. Ch. 111; 34 W. R. 143; 53 L. T. 802.

(*p*) 9 App. Cas. p. 539.

(*q*) *Murray* v. *Scott*, 9 App. Cas. p. 553; *Re Mutual Aid Permanent Benefit Building Society*, 30 Ch. D. 434; 55 L. J. Ch. 111; 34 W. R. 143; 53 L. T. 802.

(*r*) *Re National Permanent Benefit Building Society, Ex parte Williamson*, 5 Ch. 309; 18 W. R. 388; 22 L. T. 284; 34 J. P. 341; *Richardson* v. *Williamson*, L. R. 6 Q. B. 276; 40 L. J. Q. B. 145; *Chapleo* v.

though the power to borrow need not be express, it is sufficient that borrowing is properly incident to the course and conduct of the business of the society for its proper purposes (*s*). If it could be shown that the course of business authorized by the rules was such as to give, as incidental to it, a power to borrow, it would be authorized, though not expressly authorized (*t*). In the *Blackburn Case* the facts were as follows:—The society, whose rules contained no power to borrow, was allowed by its bankers to overdraw its account to a large amount. In 1876 a memorandum was signed by the officers of the society, and confirmed by the directors, stating that certain deeds of borrowing members which had been deposited with the bankers were deposited not only for safe custody, but as a security for the balance from time to time. In 1881 an order for winding-up the society was made, and the official liquidators brought an action to recover these deeds, which the bankers claimed to retain as security for the balance of their account. No evidence was given as to the application of the money which was drawn out by the society; but it was admitted that some part was applied in payment of members withdrawing from the society, and the remainder in payment of salaries, legal expenses, and expenses of mortgaged property. Under these circumstances the Court of Appeal (Selborne, L. C., Jessel, M. R., and Cotton, L. J.), held (1) that the overdrafts were *ultra vires*, being a borrowing not authorized by the rules and not properly incident to the course and conduct of the society's business for its proper purposes; and that the bankers were consequently not creditors of the society in

Brunswick Building Society, 6 Q. B. D. 696; 50 L. J. Q. B. 372; 29 W. R. 529; 44 L. T. 449; *Cunliffe Brooks & Co.* v. *Blackburn Benefit Building Society*, 9 App. Cas. 857; 54 L. J. Ch. 376; 33 W. R. 309; 52 L. T. 225; affirming *S. C.* below, 22 Ch. D. 61; 52 L. J. Ch. 92; 31 W. R. 98; 48 L. T. 33.

(*s*) *Blackburn Building Society* v. *Cunliffe Brooks & Co.*, 22 Ch. D. p. 70, *per* Lord Selborne, L. C.

(*t*) *Per* Lord Blackburn, in *Cunliffe Brooks & Co.* v. *Blackburn Benefit Building Society*, 9 App. Cas. p. 865.

respect of the overdrafts; (2) that the bankers were nevertheless entitled under the equitable doctrine of subrogation to hold the deeds as a security for repayment of so much of the moneys advanced by them as had been applied in payment of the debts and liabilities of the society properly payable, and had not been repaid, but not including payments to withdrawing members; (3) that the burden of proving how much this was lay on the bankers; and (4) that in satisfying that burden the bankers could not have the benefit of the rule in *Clayton's Case* (*u*), nor of the doctrine that a pass-book passing to and fro is evidence of a stated and settled account. The Court made an order accordingly, directing inquiries, with a declaration that in making the inquiries the bankers were to be charged with all sums received by them on account of the society, since it ceased to have any balance to its credit with the bankers, and that they were not to be allowed any sums advanced by them since that date which were applied in making payments to withdrawing members or otherwise than in paying such debts and liabilities of the society as aforesaid. On an appeal by the bankers alone the House of Lords expressed no opinion upon the question of payments to withdrawing members, or the bankers' right to hold the securities, but held that in other respects the decision and order of the Court of Appeal were right.

The liquidators then brought an action against the bankers to recover all moneys which had been paid to them by the society and applied by the bankers in discharge of their loan, and were again successful; but the bankers were allowed (1) to stand in the place of withdrawing members of the society, who had been paid out of moneys so advanced by the bankers, and to receive the amounts which would be payable to such members if they had not been paid off; and (2) to have the benefit of securities

(*u*) 1 Mer. 572.

obtained by the society by means of the overdrafts, and to have the benefit of such securities according to their order of priority, without being postponed to other securities granted by the society (*x*).

In *Owen* v. *Roberts* (*y*), which was a redemption action brought by advanced members of a terminating society against the trustees, who had borrowed money without authority, the Court made a declaration that if any of the officers of the society had made payments for which the society was liable, there not being any moneys of the society out of which such payments could be made, they were entitled to stand in the place of the persons to whom such payments were made, and to maintain a claim against the society for the amount of such payments.

Subrogation.

The benefit of this equitable doctrine of subrogation is not confined to the amount of debts and liabilities existing at the time of the advance, but extends to debts and liabilities accruing subsequently to the advance, if paid off out of it; the test in every case is, Has the transaction really added to the liabilities of the society? If the amount of its liabilities remains in substance unchanged, but there is merely for the convenience of payment a change of creditor, there is no substantial borrowing in the result so far as relates to the position of the society (*z*).

Right of subrogation where premium paid for advance.

In working out this equity of subrogation so as to give the *quasi* lender the benefit of any advance that may have been made by the society by means of the borrowed money, any premium that the society may have obtained for the advance is to be disregarded. Thus, where the borrowing member paid a premium of 10*l.* for every 100*l.* advanced, so that he in fact received only 90*l.* with an obligation to

(*x*) *Blackburn Benefit Building Society* v. *Cunliffe Brooks & Co.*, 29 Ch. D. 902; 54 L. J. Ch. 1091; 53 L. T. 741.

(*y*) 57 L. T. 81.

(*z*) *Baroness Wenlock* v. *River Dee Company*, 19 Q. B. D. 155; 56 L. J. Q. B. 589; 35 W. R. 822; 57 L. T. 320; *Blackburn Building Society* v. *Cunliffe Brooks and Co.*, 22 Ch. D. p. 71.

pay 100*l.*, it was held that the *quasi* creditor for loans in excess of the borrowing powers of the society must be allowed the benefit of the full 100*l.*, without any deduction on account of the premium (*a*).

Money improperly borrowed cannot be repaid.

It is clear from the judgment in the *Blackburn Case* (*b*), that if directors borrow money without authority not only does the loan create no debt against the society, but the money borrowed cannot lawfully be repaid out of the society's assets; to refund the money, in fact, is as improper as it was to borrow it. In such a case, the lender's only chance of recovering what he has lent seems to be under the doctrine of subrogation, though he may, in some cases, have a remedy against the directors personally; see *Richardson* v. *Williamson*, and the other cases cited below.

Loan not validated by subsequent creation of borrowing power.

Again, if the loan was contracted when the society had no power to borrow, no security subsequently given for it after borrowing powers have been obtained will be of any avail. This is well shown by the case of *Ex parte Watson* (*c*). In that case the directors of an unincorporated society, who had at the time no borrowing powers, borrowed two sums of 200*l.* and 1,000*l.* from one Watson, and gave him promissory notes for the amount. A few years afterwards the society was incorporated, and thus obtained a limited borrowing power under the Building Societies Act, 1874, s. 15. Watson having died, his administrator applied for repayment, but ultimately agreed to refrain from legal proceedings against the society on the directors undertaking to give him a deposit note for the amount due. The directors accordingly gave him a deposit or loan note for 1,200*l.*, under the seal of the society, which stated that the money was lent by him on

(*a*) *The Neath Permanent Benefit Building Society* v. *Luce*, 43 Ch. D. 158; 59 L. J. Ch. 3; 38 W. R. 122; 61 L. T. 611.

(*b*) 29 Ch. D. 902; 54 L. J. Ch. 1091; 53 L. T. 741.

(*c*) 21 Q. B. D. 301; 57 L. J. Q. B. 609; 36 W. R. 829; 59 L. T. 401; 52 J. P. 742.

the date of the note, and he in return gave up the promissory notes. On these facts a Divisional Court (Cave and Wills, JJ.) held that the deposit note was in truth given to discharge a non-existent debt and was in no way binding on the society. See also *Re Bottom Gate Industrial Society* (*d*).

Personal liability of directors for money borrowed without authority.

In some cases the lender may have a personal remedy against the directors, for it is well settled that an agent who represents himself to have authority when in fact he has none, is answerable to those who are deceived by him for the breach of an implied warranty (*e*); and directors of a building society who obtain money on a representation that they have authority to borrow on behalf of the society have been held to be within this principle, and may be sued for damages if it subsequently prove that there was in fact no such power, and that the society is not liable for the money (*f*). If the society is insolvent, however, the damages in such a case would possibly be *nil* (*g*).

Chapleo v. *Brunswick Building Society*.

Chapleo v. *Brunswick Building Society* was a somewhat remarkable case. The facts were as follows:—The directors had a limited borrowing power, and, with their sanction, advertisements were issued, stating that loans might be made by bringing the money to the office of the secretary, and many such loans were made accordingly. In each case the secretary gave a receipt for the money as a loan to the society, with a written undertaking by him to procure the promissory note of the directors for the money

(*d*) 40 W. R. 139; 56 J. P. 216.

(*e*) *Collen* v. *Wright*, 7 E. & B. 301; 8 E. & B. 647; 26 L. J. Q. B. 215; 6 W. R. 123; 4 Jur. N. S. 357; *Godwin* v. *Francis*, L. R. 5 C. P. 295; 39 L. J. C. P. 121; 22 L. T. 338.

(*f*) *Richardson* v. *Williamson*, L. R. 6 Q. B. 276; 40 L. J. Q. B. 145; *Chapleo* v. *Brunswick Building Society*, 6 Q. B. D. 696; 50 L. J. Q. B. 372; 29 W. R. 529; 44 L. T. 449; *S. C.* below, 5 C. P. D. 331; 49 L. J. C. P. 796; 29 W. R. 153; *Cross* v. *Fisher*, 65 L. T. 114; *Firbank's Executors* v. *Humphreys*, 18 Q. B. D. 54; 56 L. J. Q. B. 57; 35 W. R. 92; 56 L. T. 36.

(*g*) *Per* Blackburn, J., L. R. 6 Q. B. p. 729; and see further as to the measure of damages, *In re National Coffee Palace Co.*, 24 Ch. D. 367; 53 L. J. Ch. 57; 32 W. R. 236; 50 L. T. 38; *Meek* v. *Wendt*, 21 Q. B. D. 126.

lent, and the receipts were subsequently exchanged for these notes, which always bore the date of the receipt. The plaintiffs had several times lent money on these terms, and after the limits of the borrowing power had been exceeded, they again advanced a further sum, for which they got the usual receipt and undertaking from the secretary, but on this occasion no promissory note was ever obtained from the directors. On an action being brought against the society and the directors to recover the money, the jury found that the society held out the secretary to the plaintiffs as having authority to receive the loan on their behalf on the terms on which it was received, and that the directors did the same. The Court of Appeal exonerated the society from all liability, but held, Bramwell, L. J., doubting, that though there was no fraud on the part of the directors, they were personally liable to the plaintiffs for the money which had been so advanced. See also *Beattie* v. *Lord Ebury* (*h*); *West London Commercial Bank* v. *Kitson* (*i*); and the judgment of Mathew, J., in *Cross* v. *Fisher* (*k*), a very similar case to *Chapleo* v. *Brunswick Building Society*.

Loans contracted between November 2nd, 1874, and April 22nd, 1875.

It must be remembered that between November 2nd, 1874, and April 22nd, 1875, societies, although unincorporated, enjoyed the borrowing powers conferred by the Building Societies Act, 1874, s. 15; loans contracted during that interval by a society without any express borrowing powers were consequently valid, provided they were not in excess of the limits prescribed by the section; see Building Societies Act, 1874, s. 8, *ante*, p. 13.

(*h*) 7 Ch. 777; 41 L. J. Ch. 804; 20 W. R. 994; 27 L. T. 398; L. R. 7 H. L. 102; 44 L. J. Ch. 20; 22 W. R. 897; 30 L. T. 581.

(*i*) 12 Q. B. D. 157; affd. on appeal, 13 Q. B. D. 360; 53 L. J. Q. B. 218, 345; 32 W. R. 431, 757; 50 L. T. 208, 656.

(*k*) 65 L. T. 114, cited *ante*, p. 57.

3. *Where the rules contain a limited power only.*

Limited power must not be exceeded.

If the rules of the society contain a limited power to borrow, it must be strictly pursued, and if the limits of the power are exceeded the loan will create no liability against the society. Thus, where the rules authorized the committee to obtain loans for the purpose of making advances to members, and the committee borrowed money for general purposes and in order to pay debts, the society were not liable (*l*). So where the rules empowered the directors from time to time to borrow for the purposes of the society such sums and at such rates of interest and under such terms and conditions as they might think proper and expedient, and the directors employed the money they borrowed in loan transactions with another society and in buying an estate, objects quite foreign to the purposes of the society, it was held that the borrowing was illegal, and created no debt against the society (*m*). In another case, however, in the same winding-up, the Court refused to order the lender to give up deeds which had been deposited with him as security for the loan (*n*). It may, perhaps, be doubted whether this last decision can now be relied on (*o*), though there is this difference between the cases, that in *Wilson's Case* there was a power to borrow, though the money borrowed was misapplied, whereas in the *Blackburn Case* there was no power to borrow at all.

Again, where the rules authorized the directors to borrow up to a certain amount, and they contracted a loan after the prescribed limit had been already exceeded, the Court of Appeal held that the society, which had received no benefit from the loan, were not liable to repay it,

(*l*) *Moye* v. *Sparrow*, 18 W. R. 400; 22 L. T. 154; W. N. (1870), 33.

(*m*) *Re Durham County Building Society, Davis' Case*, 12 Eq. 516; 41 L. J. Ch. 124; 25 L. T. 83.

(*n*) *Wilson's Case*, 12 Eq. 521; 41 L. J. Ch. 125; 25 L. T. 84.

(*o*) See *Cunliffe Brooks & Co.* v. *Blackburn Benefit Building Society*, cited above.

though they also held that, under the circumstances, the directors themselves were personally liable for the money which had been advanced (*p*). In his judgment in this case, Baggallay, L. J., said: "The acts of the directors would in no way give effect to that which was in itself unlawful, nor in my opinion would the assent of every shareholder to the transaction make it binding upon the society as a society, whatever might have been the liability of individual shareholders. . . . . If the society had received the benefit of the 100*l.*, if for instance that amount had found its way to the credit of their banking account, the plaintiffs might, upon the authority of some of the decisions which have been cited in their behalf, have been enabled to establish a claim against the society to the extent of the benefit derived by them from the transaction, but no such benefit was derived by the society from the transaction with which we are dealing. . . . It has also been urged upon us that the plaintiffs had no means of knowing or ascertaining whether the society had exhausted its powers of borrowing; or whether indeed there was any limit to such power. To this argument I can only reply, that persons who deal with corporations and societies that owe their constitution to, or have their powers defined or limited by, Acts of Parliament, or are regulated by deeds of settlement or rules, deriving their effect more or less from Acts of Parliament, are bound to know or to ascertain for themselves the nature of the constitution and the extent of the powers of the corporation or society with which they deal. The plaintiffs and every one else who has dealings with a building society are bound to know that such a society has no power of borrowing, except such as is conferred upon it by its rules,

(*p*) *Chapleo* v. *Brunswick Building Society*, 6 Q. B. D. 696; 50 L. J. Q. B. 372; 29 W. R. 529; 44 L. T. 449, cited above, p. 81; reversing on the first point, *S. C.* below, 5 C. P. D. 331; 49 L. J. C. P. 796; 29 W. R. 153.

and if in dealing with such a society they neglect or fail to ascertain whether it has the power of borrowing, or whether any limited power it may have has been exceeded, they must take the consequences of their carelessness. It may be that the plaintiffs in the present case have been misled, by the misrepresentations or conduct of others, into the belief that the company had full authority to accept the loan from them; that is a question which I shall have to consider when dealing with the other appeal; such representations or conduct may doubtless give rise to a claim against the parties making such misrepresentations or so conducting themselves, but in my opinion they can in no way give rise to or support a claim against the society."

Overdrawing banking account is borrowing.

There is no distinction between borrowing by overdrawing the society's banking account, and borrowing by obtaining a loan in the ordinary way; see the cases cited *ante*, p. 56.

CHAPTER VI.

THE OFFICERS OF THE SOCIETY.

A. *Incorporated Societies.*

Officers.

The affairs of a building society are managed, generally speaking, by a board of directors or committee of management, a secretary or manager, and two or more auditors; and it is usual also to appoint a solicitor to transact the legal business of the society, and a surveyor to advise the board on the value of property offered as security for advances. Trustees are not necessary officers in the case of an incorporated society, though they may be appointed for the purpose of investing surplus funds (*a*) and of being admitted to copyholds of which the society is mortgagee (*b*).

Officers are bound by the rules.

All the officers are bound by the rules (*c*), which must specify their powers and duties and the manner of appointing, remunerating, and removing them (*d*).

Officers to give security.

Every officer having the receipt or charge of any money belonging to the society must, before taking upon himself the execution of his office, become bound with one sufficient surety at the least, in a bond according to the form below, or give the security of a guarantee society, or such other security as the society direct, in such sum as the society require, conditioned for rendering a just and true account of all moneys received and paid by him on account of the

(*a*) Building Societies Act, 1874, s. 25; see *ante*, p. 45, as to this section.

(*b*) *Ibid.* s. 28.

(*c*) *Ibid.* s. 21.

(*d*) *Ibid.* s. 16, sub-ss. 6, 12.

society, and for payment of all sums of money due from him to the society, at such times as its rules appoint, or as the society require him to do so (*e*).

It was probably intended by the legislature that, in the absence of any special direction by the society, the directors or committee of management should see that a proper bond is given in accordance with this provision, though the obligation is not imposed upon them in terms. If this duty does in fact rest on the directors they would clearly be liable for any loss resulting to the society from its non-performance (*f*).

The form of bond given in the schedule to the Act of 1874 is a follows:—

Form of bond.

KNOW ALL MEN by these presents, that we, A. B., of , one of the officers of the Building Society, established at in the county of , and C. D. of (as surety on behalf of the said A. B.), are jointly and severally held and firmly bound to the said society in the sum of to be paid to the said society, for which payment well and truly to be made we jointly and severally bind ourselves, and each of us by himself, our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals. Dated the day of in the year of our Lord .

WHEREAS the above-bounden A. B. hath been duly appointed to the office of of the Building Society, established as aforesaid, and he, together with the above-bounden C. D. as his surety, have entered into the above-written bond, subject to the condition hereinafter contained:

NOW THEREFORE the condition of the above-written bond is such, that if the said A. B. shall and do render a just and true account of all moneys received and paid by him, and shall and do pay over all the moneys remaining in his hands, and assign and transfer or deliver all securities and effects, books, papers, and property of or belonging to the said society in his hands or custody, to such person or persons as the said society shall appoint, according to the rules

(*e*) Building Societies Act, 1874, s. 23.

(*f*) *Evans* v. *Coventry*, 8 De G. M. & G. 835; 26 L. J. Ch. 400; 5 W. R. 436; 29 L. T. (O. S.) 118; 22 J. P. 19; reversing the decision below, 2 Jur. N. S. 557; 25 L. J. Ch. 491; 4 W. R. 466; 27 L. T. (O. S.) 85; 20 J. P. 691.

of the said society, together with the proper or legal receipts or vouchers for such payments, then the above-written bond shall be void and of no effect, otherwise shall be and remain in full force and virtue.

Officers to account.

Every officer, his executors or administrators, must, upon demand made, or notice in writing given or left at his last or usual place of residence—

(a) Give in his account as may be required by the board of directors or committee of management of the society, to be examined and allowed or disallowed by them;

(b) Pay over all the moneys remaining in his hands;

(c) Deliver all securities and effects, books, papers, and property of the society in his hands or custody, to such person as the society appoint (*g*).

In case of any neglect or refusal to deliver such account, or to pay over such moneys, or to deliver such securities and effects, books, papers, and property, the society may sue upon the bond, or may apply to the County Court, who may proceed thereupon in a summary way, and make such order thereon as to the Court in its discretion shall seem just, which order will be final and conclusive (*h*).

Remedy of the society against its officers.

The remedy of the society against an officer under this provision is therefore twofold. It may either (1) sue him on the bond; or (2) apply (in England) to the County Court of the district in which the chief office or place of meeting for the business of the society is situated, and the Court may proceed in a summary way and make such order as it thinks just, from which order there will be no appeal.

Suing on the bond.

1. An action on the bond may be brought in any Court apparently. The society will sue in its registered name, and the proceedings will be the same in all respects as in any other action of a similar nature.

(*g*) Building Societies Act, 1874, s. 24.

(*h*) *Ibid.*

2. If the society prefers to proceed in the County Court the application, whether any bond be put in suit or not, must be by action commenced by plaint and summons in the ordinary way, in which the society will be plaintiffs, and the officer against whom the application is made defendant (*i*). Sect. 24 of the Building Societies Act, 1874, being precisely similar to sect. 20 of the Friendly Societies Act, 1875 (*k*), the practice in proceedings against officers of building societies will follow the rules laid down with regard to corresponding proceedings against officers of friendly societies (*l*). The summons or particulars annexed thereto must therefore state the nature of the act required to be done or the neglect complained of, and, if property be required to be delivered up, the nature of such property (*m*). The subsequent proceedings in the action will be the same as in ordinary cases, as the general practice prescribed by the County Court Rules applies to all proceedings whatsoever authorized by any existing or future Act to be commenced or taken, except where such practice may be inconsistent with the provisions of any such Act (*n*). Proceeding in County Court.

A claim by a society against one of its officers for misappropriating and keeping in his hands money belonging to the society is not a "dispute" that must be referred to arbitration, and an action for it will not be stayed (*o*). Claim is not a "dispute."

An officer who has been dismissed may be ordered forthwith to deliver up property belonging to the society without regard to the question whether the dismissal was Dismissed officer.

(*i*) County Court Rules, 1889, Ord. XLI. r. 5.
(*k*) 38 & 39 Vict. c. 60.
(*l*) Pitt-Lewis on County Courts, vol. ii. p. 293, 4th ed.
(*m*) *Ibid.* p. 294; County Court Rules, 1889, Ord. XLI. rr. 4—8.
(*n*) County Court Rules, 1889, Ord. LI. r. 26.
(*o*) *Municipal Permanent Investment Building Society* v. *Richards*, 39 Ch. D. 372; 58 L. J. Ch. 8; 37 W. R. 184; 58 L. T. 931; 59 L. T. 883; *Sinden* v. *Banks*, 3 El. & El. 623; 30 L. J. Q. B. 102; 7 Jur. N. S. 910; 9 W. R. 415; 3 L. T. 775; *S. C. nom. Lindon* v. *Banks*, 25 J. P. 390.

wrongful or not, and from such an order there is no appeal (*p*).

Mandamus.

An officer who has been dismissed has no remedy by mandamus, which lies only to reinstate a person in an office when the office and its tenure are of a permanent character (*q*).

No meeting of directors can remove an officer and appoint a successor in his place unless it has been duly constituted. Thus, where the power of electing the treasurer and other officers was vested in a committee of eleven persons, and at a meeting at which ten members only were present—the eleventh not having received notice—the existing treasurer was removed and another person elected in his stead, it was held that the election was clearly void (*r*).

Scotland and Ireland.

In Scotland an application under sect. 24 must be made to the Sheriff's Court of the county in which the chief office or place of meeting for the business of the society is situate; in Ireland it is made to the Civil Bill Court within the jurisdiction of which the chief office or place of meeting is situate (*s*).

Punishment of fraud in withholding money, &c.

If any person whosoever, by false representation or imposition—

(a) Obtains possession of any moneys, securities, books, papers, or other effects of the society; or

(b) Having the same in his possession, withholds or misapplies the same, or wilfully applies any part thereof to purposes other than those expressed or directed in the rules of the society and authorized by the Act of 1874,

he will be liable on summary conviction to a penalty not exceeding twenty pounds, with costs not exceeding twenty

(*p*) *First Edinburgh &c. Starr-Bowkett Building Society* v. *Munro*, 11 R. 5.

(*q*) *Evans* v. *Hearts of Oak Benefit Society*, 12 Jur. N. S. 163; 13 W. R. 724.

(*r*) *Roberts* v. *Price*, 4 C. B. 231; 11 Jur. 352; 16 L. J. C. P. 169.

(*s*) Building Societies Act, 1874, s. 4.

shillings, and to be ordered to deliver up to the society all such moneys, securities, books, papers, or other effects of the society, and to repay the amount of money applied improperly, and in default of such delivery of effects, or repayment of such amount of money, or payment of such penalty and costs aforesaid, to be imprisoned, with or without hard labour, for any time not exceeding three months; but nothing contained in this provision will prevent any such person from being proceeded against by way of indictment if a conviction has not been previously obtained against him for the same offence under the provisions of the Act (*t*).

"Withholds or misapplies."

In a case under the Friendly Societies Act, 1855 (*u*), which contained provisions very similar to the above, it was held that to render the treasurer of a society liable to penalties for "withholding or misapplying" moneys of the society which had come to his hands as treasurer, it must be shown that he had been guilty of some fraud or misrepresentation, and that mere inability to pay over the money to the trustees was not enough (*x*). And see also *Ex parte O'Donnell* (*y*).

Officer cannot be sued for money after judgment and execution for misappropriation.

If an officer who has been convicted of misappropriating money has been ordered to repay it, and to pay a penalty and costs, and has been imprisoned for default in obeying the order, he cannot afterwards be sued for the money (*z*). "In the statute in question," said Lord Halsbury, L. C., "two different proceedings have been mixed together by the act of the legislature. First, there is a penalty imposed for wilfully withholding or misapplying the property of the

(*t*) Building Societies Act, 1874, s. 31.

(*u*) 18 & 19 Vict. c. 63, s. 24.

(*x*) *Barrett* v. *Markham*, L. R. 7 C. P. 405; 41 L. J. M. C. 118; 27 L. T. 313; 36 J. P. 535.

(*y*) L. R. 1 Q. B. 274; 35 L. J. M. C. 99; 14 W. R. 83; 30 J. P. 279.

(*z*) *Vernon* v. *Watson*, [1891] 2 Q. B. 288; 60 L. J. Q. B. 472; 39 W. R. 519; 64 L. T. 728; 56 J. P. 85; affg. *S. C.* below, [1891] 1 Q. B. 400; 60 L. J. Q. B. 205; 64 L. T. 460; 55 J. P. 454; *Knight* v. *Whitmore*, 53 L. T. 233; both decided under the Friendly Societies Act, 1875, s. 16, sub-s. 9.

society, and then there follows that which is strictly and properly a civil proceeding, namely, an order to deliver up the property or repay the money improperly withheld or misapplied, and if default be made in such delivery or repayment, or if default be made in payment of the penalty and costs, in either of those cases the statute prescribes a maximum amount of imprisonment, which is to be a satisfaction for the criminal offence, and also for the non-payment of the civil debt and costs. We must apply the ordinary principles of law to each part of the procedure. In fact, the legislation itself points in that direction, because one part of the section provides that the criminal proceedings taken under it shall not interfere with the right to indict, but there is no corresponding provision with respect to the civil part of the process. The result in the present case is that the respondent has been summoned for a civil debt; that he has been ordered to pay it, and that he has had execution against him in respect of it. It seems to me impossible to contend, on the true construction of the statute, that there has not been execution executed and a satisfaction of the debt. Under those circumstances it is impossible to say that there is any power to sue again for the same debt" (*a*).

Purchase by officer of mortgaged property.

An officer of the society employed about a sale of property mortgaged to the society and sold under the power of sale is entirely disabled from becoming the purchaser, and any such purchase will be set aside by the Court even though the sale was by auction and there is no proof of undervalue (*b*).

Agreement to stifle a prosecution.

In endeavouring to recover money of the society which has been misappropriated by one of its officers, the directors must be careful not to come within the rule of law forbidding any agreement to stifle a prosecution. In

(*a*) [1891] 2 Q. B. p. 290.
(*b*) *Martinson* v. *Clowes*, 21 Ch. D. 857; 51 L. J. Ch. 594; 30 W. R. 795; 46 L. T. 882; W. N. (1885), 41.

a very recent case (*c*), the secretary of a building society, who had made default in accounting for money paid to him, and was threatened by the society with a prosecution for embezzlement, applied for assistance to the plaintiffs, who were his relatives, and they gave a written undertaking to the society to make good the greater part of the debt due from the society, the expressed consideration being the forbearance of the society to sue the secretary for the amount for which the plaintiffs made themselves responsible, and in pursuance of that undertaking they gave two promissory notes and some title deeds as collateral security to the society. The plaintiffs in giving the undertaking were actuated by the desire to prevent the prosecution, and that was known to the directors of the society; but no promise was made that there should be no prosecution. The society brought an action on the promissory notes in the Queen's Bench Division, and the plaintiffs brought an action in the Chancery Division to set aside the promissory notes and the collateral securities on the ground that they were made for an illegal consideration. The Queen's Bench action was transferred to the Chancery Division, and the two actions tried together, and it was held that it was an implied term of the agreement that there should be no prosecution; that the agreement was therefore founded on an illegal consideration, and void; and that the society could not recover on the promissory notes or enforce the securities; and, the society not opposing, they were ordered to be delivered up to the plaintiffs.

Directors or committee of management.

To consider now the duties of the different officers somewhat more in detail, we have, first, the board of directors or committee of management, to whom the

(*c*) *Jones* v. *Merionethshire Permanent Benefit Building Society*, [1892] 1 Ch. 173; affirming the decision below, [1891] 2 Ch. 587; 61 L. J. Ch. 138; 40 W. R. 273; 65 L. T. 314, 685; 17 Cox, C. C. 334, 389.

general conduct of the society's business is entrusted, and to whom the secretary and other officers are usually subordinate. The powers and duties of the directors or committee must be set forth in the rules, but they have in addition the following statutory powers:—

Statutory powers.

(1.) They may require officers having receipt or charge of money to give in their accounts to be examined, and allowed or disallowed by the board (*d*):

(2.) Where the society does not do so, they may from time to time appoint and remove trustees for the purpose of investments in the public funds, or on security of copyhold or customary estate (*e*):

(3.) They may direct payment of sums not exceeding 50*l.* belonging to members or depositors who die intestate, without letters of administration being taken out (*f*):

(4.) They may order the affixing of the seal to receipts for vacating mortgages and further charges (*g*).

Three members of the board or committee must sign, with the secretary or other officer, any application for a direction to the registrar to transfer stock (*h*).

Directors are not trustees, but agents.

The position of the directors of a building society is substantially the same as that of the directors of an ordinary joint-stock trading company, that is to say, they are not trustees, but paid confidential agents, with very extensive powers, selected to manage the affairs of the society for the benefit of themselves and the other shareholders. The law with regard to the general powers and liabilities of the directors of a trading company was fully discussed and the authorities considered by Mr. Justice Kay in his judgment in *In re Faure Electric Accumulator Co.* (*i*). The learned

(*d*) Building Societies Act, 1874, s. 24, *ante*, p. 88.
(*e*) *Ibid.* s. 25, *ante*, p. 46.
(*f*) *Ibid.* s. 29, *post*, p. 134.
(*g*) *Ibid.* s. 42; see form of receipt in the schedule to the Act.
(*h*) *Ibid.* s. 26, *ante*, p. 47.
(*i*) 40 Ch. D. 141; 58 L. J. Ch. 48; 37 W. R. 42; 59 L. T. 918.

judge said (40 Ch. D. p. 150): "These questions involve a consideration of what is the real position of the directors of a joint-stock trading company. With respect to the capital of the company which is under their management, it has been said that they are '*quasi*-trustees' for the company: *Flitcroft's Case* (*k*). In that and other respects they are, 'to a certain extent, trustees' (Lindley on Partnership) (*l*). In the language of Lord Romilly, in *York and North Midland Ry. Co.* v. *Hudson* (*m*), 'The directors are persons selected to manage the affairs of the company for the benefit of the shareholders; it is an office of trust, which, if they undertake, it is their duty to perform fully and entirely.' They certainly are not trustees in the sense of those words as used with reference to an instrument of trust, such as a marriage settlement or a will. One obvious distinction is that the property of the company is not legally vested in them. Another, and perhaps still broader, difference is that they are the managing agents of a trading association, and such control as they have over its property, and such powers as by the constitution of the company are vested in them, are confided to them for purposes widely different from those which exist in the case of such ordinary trusts as I have referred to, and which require that a larger discretion should be given to them. Perhaps the nearest analogy to their position would be that of the managing agent of a mercantile house to whom the control of its property and very large powers for the management of its business are confided; but there is no analogy which is absolutely perfect. Their position is peculiar because of the very great extent of their powers and the absence of control, except the action of the shareholders of the company. However, it is quite obvious that to apply to directors the strict rules of the Court of

(*k*) 21 Ch. D. 519, 534; 52 L. J. Ch. 217; 31 W. R. 174; 48 L. T. 86.

(*l*) 4th ed. p. 587.

(*m*) 16 Beav. 485, 491.

Chancery with respect to ordinary trustees might fetter their action to an extent which would be exceedingly disadvantageous to the companies they represent. In *In re Forest of Dean Coal Mining Co.* (*n*), Sir G. Jessel, M. R., said: 'Directors have sometimes been called trustees, or commercial trustees, and sometimes they have been called managing partners. It does not much matter what you call them so long as you understand what their true position is, which is that they are really commercial men managing a trading concern for the benefit of themselves and of all the other shareholders in it. . . . They are no doubt trustees of assets which have come into their hands, or which are under their control, but they are not trustees of a debt due to the company. The company is the creditor, and, as I said before, they are only the managing partners.' In *Smith* v. *Anderson* (*o*) Lord Justice James said: 'The distinction between a director and a trustee is an essential distinction founded on the very nature of things. A trustee is a man who is the owner of the property and deals with it as principal, as owner, and as master, subject only to an equitable obligation to account to some persons to whom he stands in the relation of trustee, and who are his *cestuis que trust*. The same individual may fill the office of director and also be a trustee having property, but that is a rare, exceptional, and casual circumstance. The office of director is that of a paid servant of the company. A director never enters into a contract for himself, but he enters into contracts for his principal, that is, for the company of whom he is a director and for whom he is acting. He cannot sue on such contracts nor be sued on them unless he exceeds his authority. That seems to me to be the broad distinction between trustees and directors.' If directors apply money

(*n*) 10 Ch. D. 451, 453; 27 W. R. 594; 40 L. T. 287.

(*o*) 15 Ch. D. p. 275; 50 L. J. Ch. 39; 29 W. R. 21; 43 L. T. 329.

of the company for purposes so outside its powers that the company could not sanction such application, they may be made personally liable as for a breach of trust. On the other hand, if they apply the money of the company or exercise any of its powers in a manner which is not *ultra vires*, then a strong and clear case of misfeasance must be made out to render them liable. Lord Hatherley, in *Overend & Gurney Co.* v. *Gibb* (*p*), intimates that in such a case their conduct must amount to *crassa negligentia*. In *Marzetti's Case* (*q*) a definite test is applied. Lord Justice James said: 'A director should not be held liable upon any very strict rules such as those, in my opinion, too strict rules which were laid down by the Court of Chancery to make unfortunate trustees liable; directors are not to be made liable on those strict rules which have been applied to trustees.' And he intimates that the negligence for which a director would be held liable must be such as would make a managing director of a business liable to his employers. Lord Justice Brett said the director must be 'guilty of such negligence as would make him liable in an action. Mere imprudence is not such negligence. Want of judgment is not. It must be such negligence as would make a man liable in point of law'; and with this Lord Justice Cotton concurs. That is the law which must be applied to the circumstances of this case."

Sheffield &c., Society v. *Aizlewood.*

In the subsequent case of *Sheffield & South Yorkshire Permanent Building Society* v. *Aizlewood* (*r*), it was held that these principles applied also to the directors of a building society, and that such directors, having a large discretion vested in them as confidential agents, might properly make advances on securities of a speculative nature, and such as would not be admissible in the case of

(*p*) L. R. 5 H. L. 487; 42 L. J. Ch. 67.
(*q*) 28 W. R. pp. 542, 543.
(*r*) 44 Ch. D. 412; 59 L. J. Ch. 34; 62 L. T. 678; 6 Times L. R. 25.

ordinary trustees. The facts in that case were as follows:— The rules provided that none of the directors should be answerable for any act or default of any other of them or for the insufficiency or deficiency in title of any security taken for the repayment of any advances, unless the loss should happen through their own neglect or default; that the board should have power to conduct the affairs of the society according to its rules, to appoint agents and committees of directors, and to invest the funds of the company not immediately required for its purposes, according to sect. 25 of the Act of 1874 (which authorizes investments in leasehold securities); that the solicitor of the society should investigate the title to all property offered as security and prepare all mortgages; that the funds of the society should be applied at the discretion of the board in making advances to members in respect of the shares held by them on (*inter alia*) legal or equitable mortgage of leasehold property, and that when the directors were of opinion that the premises were a sufficient security, and the solicitor was satisfied that the title to the property was satisfactory, the amount granted should be paid to the borrower on his executing a mortgage in the form required by the solicitor. In the year 1878, the directors advanced 25,000*l.* to a borrower upon two securities, the principal of which was a second mortgage of a leasehold colliery, taking at the same time as collateral security a charge upon certain beneficial interests under a trust of personal estate. During the negotiations which resulted in the advance, the chairman of the board was in direct communication with the borrower, and took an active part in inquiring into the nature and value of the security; while the other directors simply exercised in good faith their judgment on the materials submitted to them, and the advance was made upon a valuation and report by a competent surveyor selected by the chairman from five surveyors whose names were submitted by the borrower. In

1881, the first mortgagees of the principal colliery comprised in the society's security threatened to foreclose, and to prevent this the directors made a further advance of 41,000*l.*, 40,000*l.* of which they borrowed for the purpose under their borrowing powers, and they subsequently entered into possession of the colliery, and paid an arrear of wages then due to the colliers, and they further expended considerable sums in payment of rents and royalties, and in working and maintaining the colliery until the society went into liquidation. On an action being brought against the surviving directors, and the representatives of two who had died, to make them liable for the moneys so advanced and expended, Mr. Justice Stirling held—

(1.) That an advance upon the security of a leasehold colliery was within the powers of the society;

(2.) That the inclusion of the interests in personal estate as collateral security did not necessarily vitiate the whole loan, though the propriety of the transaction must be tested as if no such ingredient entered into it;

(3.) That it was within the powers of the directors to accept a leasehold colliery as security for an advance;

(4.) That as the rules of the society did not limit the directors to securities under which a legal estate would be vested in them, and the risk of foreclosure by the first mortgagee was one which a man of business and ordinary prudence might be willing to incur, the directors were not guilty of negligence in acting on the report of the surveyor and taking a second mortgage as their principal security;

(5.) That the chairman, against whom the action came on in default of pleading to allegations that the advance was made upon improper security, was, but that the other directors were not, liable to

make good to the society the loss of the sum advanced;

(6.) That, as the first advance was within their powers, the directors had power by implication to do those things which might result from the working out of the relation subsisting between first and second mortgagees, and accordingly had power to redeem the first mortgagee and to exercise their borrowing powers for the purpose of paying him off;

(7.) That they also had power to enter into possession of the mortgaged property, and to pay out of the assets of the society the rents reserved by the lease, and the proper expenses of maintaining and working the colliery without rendering themselves liable for such expenditure; but

(8.) That an inquiry must be directed as to the sum paid by the directors for arrears of wages when they took possession, as such payment was not one for which there was a potential necessity.

Small v. *Smith.*

With this case may be compared that of *Small* v. *Smith* (*s*), where it was held by the House of Lords that directors who had made an advance to a member subject to a prior charge were not justified in giving a bond whereby the society in consideration of the prior mortgagees forbearing for six months to exercise their power of sale became bound at the expiration of that period to pay what was owing on the prior incumbrance, there not being, in the words of Lord Selborne, "a potential necessity for entering into a transaction of the kind to protect the security."

Directors, when held liable.

Where directors paid dividends to shareholders and remuneration to themselves out of imaginary profits, relying on delusive balance sheets which they had never

(*s*) 10 App. Cas. 119; *S. C. nom. Shiell's Trustees* v. *Scottish Property Investment Society in Liquidation*, 12 R. (H. L.) 14; 22 Sc. L. R. 139.

properly examined, they were made liable for the sums so paid (*t*). So, where without the knowledge of the shareholders they voted and paid themselves out of the funds of the company a commission on certain purchases and sales, and entered such payment in the books of the company, but made no mention of it in their reports or balance sheets, they were ordered to repay the amount with interest (*u*). So, where directors had received a large sum from a borrower by way of bonus on the occasion of every loan made to him, they were made liable to the society for the amount so received (*x*). And directors who make an advance on the security of the borrower's shares in the society are clearly liable for the consequences, such a security being altogether contrary to law and invalid (*y*); but not directors who make an advance on house property which one of the board has inspected and reported to be a sufficient security, though in the event it proves not to be so, for this is a mere error of judgment (*z*).

General principle.

It may therefore be considered settled that the directors of a building society have a larger discretion than is accorded to trustees, and that they will not be liable for anything short of gross negligence so long as they do not exceed the powers, express or implied, with which they are entrusted. If, however, they go beyond this limit, and apply the funds in a way that the society has not authorized, and *à fortiori* if they apply them in a way that it *could* not authorize, then they will clearly be liable as for a breach of trust, and must make good any loss that the society may have sustained.

(*t*) *Leeds Estate Building and Investment Co.* v. *Shepherd*, 36 Ch. D. 787; 57 L. J. Ch. 46; 36 W. R. 322; 57 L. T. 684; cited *post*, p. 106.

(*u*) *In re Oxford Benefit Building and Investment Society*, 35 Ch. D. 502; 56 L. J. Ch. 98; 35 W. R. 116; 55 L. T. 598.

(*x*) *Municipal Permanent Investment Building Society* v. *Richards*, W. N. (1889), 103.

(*y*) *Cullerne* v. *London and Suburban General Permanent Building Society*, 25 Q. B. D. 485; 59 L. J. Q. B. 525; 39 W. R. 88; 63 L. T. 511; 6 Times L. R. 214, 449; 55 J. P. 148.

(*z*) *Ibid.*

Resignation of director.

It would seem that in the absence of some provision to that effect in the rules, a director is not authorized to send in his resignation to his colleagues, he can only resign to a general meeting of the society: see *Municipal Freehold Land Co.* v. *Pollington* (*a*). In that case a director of a joint-stock company, governed by Table A. in the schedule to the Companies Act, 1862, which does not contain any provision as to the resignation of directors, sent a letter to the board resigning his office. The resignation was ordered to stand over, and was accepted by the company at its next general meeting. Mr. Justice Kekewich held that the board had no power to accept the resignation, which, therefore, did not become effective till it was accepted by the general meeting.

Liability on bills and notes.

Where a bill is accepted or a note drawn by directors or other officials, they must be careful, if they do not mean to be personally liable, to state explicitly on the face of the document that they are signing on behalf of the society; the mere addition after their names of the word "directors" or "secretary" will not suffice. Thus, in

Bottomley v. *Fisher*.

Bottomley v. *Fisher* (*b*), a promissory note was made in the following form:—

"Midland Counties Building Society, No. 3.

"Birmingham, 1st Sept., 1856.

"One month after demand, we jointly and severally promise to pay to Mr. John Bottomley the sum of one hundred and twenty pounds, with interest thereon after the rate of six pounds per cent. per annum (payable half-yearly), for value received.

"W. R. Heath,
"S. B. Smith, } *Directors.*
"W. D. Fisher, *Secretary.*"

An action was brought on this note against Fisher alone. *Held*, that he was personally liable.

(*a*) 2 Meg. 307.

(*b*) 1 H. & C. 211; 31 L. J. Ex. 417; 10 W. R. 669; 6 L. T. 688; 27 J. P. 23; and see also *Price* v. *Taylor*, 5 H. & N. 540; 29 L. J. Ex. 331; 6 Jur. N. S. 402; 8 W. R. 419; 2 L. T. 221; 24 J. P. 470; *Allan* v. *Miller*, 22 L. T. 825; Lindley on Company Law, p. 231 *et seq.* 5th ed.

Nor will the mere fact that the seal is affixed to the bill or note exclude the personal liability of the signatories (*c*).

If any incorporated society receives loans or deposits in excess of the limits prescribed by the Act, the directors or committee of management are personally liable for the amount so received in excess (*d*). The directors will be liable to pay for work done by order of the secretary, if there is evidence to satisfy the jury that the secretary was the general agent of the directors, even though the work was not ordered at a board meeting (*e*). Liability of directors for money borrowed in excess of borrowing powers.

The rules usually direct that the common seal of the society shall be kept at the chief office under lock and key, and be affixed only by order of the board, and in presence of two or more directors and the secretary. Whatever formalities are prescribed for the use and custody of the seal, the directors should be careful to adhere to, though the simple omission of a formality, or a departure from the forms required, will not nullify a contract to which the seal has been affixed, provided it be of a kind authorized by the constitution and rules of the society (*f*); nor, it seems, will great negligence in the custody of the seal disentitle the society to recover property of which it has been deprived by a fraudulent use of the seal, unless such negligence has led directly and proximately to the loss (*g*). Common seal.

The secretary or manager is an officer of great importance in a building society. The duties generally assigned to him by the rules are to attend the meetings of the society and the directors, and take minutes of the pro- Secretary or manager.

(*c*) *Dutton* v. *Marsh*, L. R. 6 Q. B. 361; 40 L. J. Q. B. 175; 19 W. R. 754; 24 L. T. 470.

(*d*) Building Societies Act, 1874, s. 43; see as to this, *ante*, p. 57, and cases there cited.

(*e*) *Allard* v. *Bourne*, 15 C. B. N. S. 468; 3 N. R. 42.

(*f*) *Prince of Wales Assurance Co.* v. *Harding*, El. Bl. & El. 183; 3 C. B. N. S. 756, *per* Lord Campbell, C. J.; Lindley on Company Law, p. 174, 5th ed.

(*g*) *Mayor, &c. of Merchants of the Staple of England* v. *Bank of England*, 21 Q. B. D. 160; 57 L. J. Q. B. 418; 56 L. T. 665; 52 J. P. 580; *Bank of Ireland* v. *Trustees of Evans' Charities*, 5 H. L. C. 389.

ceedings; to keep the accounts; to send out notices; and to conduct the correspondence of the society; but, in practice, it often happens that almost the whole management of the society's affairs falls into his hands, and it is of great consequence, therefore, that he should be a thoroughly capable and trustworthy person.

As to the terms on which the secretary of a building society is presumed to give his services, see *Alexander* v. *Worman*, cited *infra*, p. 107.

Statutory provisions.

The following statutory provisions apply to the secretary:—

(1.) He must countersign the statutory receipt endorsed on a mortgage or further charge (*h*).

(2.) He or some other officer (in practice it is almost always the secretary) must prepare the society's annual account and statement (*i*), and he will be liable for default in making the return to the registrar, or for making a false return, to a penalty of 5*l.* (*k*);

(3.) He must give notice to the registrar within seven days of any change of the chief office of the society (*l*);

(4.) He can make a printed copy of the rules evidence by certifying it to be a true copy of the registered rules of the society (*m*).

Register of mortgages.

It is also very desirable that the secretary should keep a register of the mortgages made to the society, and particularly of all notices received from subsequent incumbrancers (*n*).

Documents to be signed by secretary.

The Treasury Regulations require the following documents to be signed by the secretary and three members of the society:—

(1.) An application to register a new society, and the

(*h*) Building Societies Act, 1874, s. 42.
(*i*) *Ibid.* s. 40.
(*k*) *Ibid.* s. 43.
(*l*) Building Societies Act, 1877, s. 2.
(*m*) *Ibid.* s. 20.
(*n*) See *West London Bank* v. *Reliance Building Society*, 29 Ch. D. 954; 53 L. T. 442.

two printed copies of the rules by which the application must be accompanied (*o*).

(2.) An application for the registration of an alteration of rules, whether partial or complete, and the two copies of the partial alteration, resolution for rescission of rule, or new rules by which the application is to be accompanied (*p*) ;

(3.) The notice to the registrar of a change of name (*q*) ;

(4.) The notice to the registrar of a change of chief office (*r*) ;

(5.) An application to the registrar for a direction to transfer stock (*s*).

False balance-sheets.

A secretary or manager who prepares false and misleading balance-sheets will be personally liable for the consequences (*t*).

Liability of secretary for the acts of his clerk.

In a recent case the secretary of a building society employed a private clerk, who assisted him in transacting the business of the society. The directors from time to time, with the knowledge and assent of the secretary, handed cheques to this clerk for the purpose of being paid to withdrawing members, though according to the rules the directors ought themselves to have paid the cheques to the withdrawing members direct. The clerk misappropriated the cheques; *held*, upon the society being wound up, that the secretary was liable to make good the sums so appropriated (*u*).

Auditors.

The following statutory duties appear to be imposed upon the auditors :—

(a) To attest the yearly account and statement of the society (*x*) ;

(*o*) Treasury Regulations, 1884, r. 2, Appendix B., *infra*.
(*p*) *Ibid.* rr. 4, 5.
(*q*) *Ibid.* r. 8.
(*r*) *Ibid.* r. 24.
(*s*) *Ibid.* r. 9.
(*t*) *Leeds Estate Building and Investment Co.* v. *Shepherd*, 36 Ch. D. 787; 57 L. J. Ch. 46; 36 W. R. 322; 57 L. T. 684, cited *post*, p. 106; *Municipal Freehold Land Co.* v. *Pollington*, 2 Meg. 307.
(*u*) *Ex parte James*, 48 J. P. 54.
(*x*) Building Societies Act, 1874, s. 40.

(b) To inspect once in every year at least the mortgages and other securities belonging to the society (*y*).

Liability of auditor for negligence.

An auditor must use due diligence in the discharge of his duties, and may be made personally liable for the consequences if he do not: see *Leeds Estate Building and Investment Co.* v. *Shepherd* (*z*). In that case the directors of a company, relying on accounts which they never properly investigated, paid dividends to the shareholders at the rate of 5 per cent., paid remuneration to themselves on a corresponding scale, and under the authority of a resolution of the company paid bonuses to the manager, all these payments being in fact made out of capital. The balance sheets on which the dividends were declared were prepared not by the directors, but by the manager. They were delusive, they over-estimated the assets of the company, and were framed with the object of showing a profit available for a dividend. The auditor never looked at the articles of association, but accepted the statements of the manager, and certified from time to time that the accounts submitted to him were true copies of those shown in the books of the company. No proper statement of income and expenditure or auditor's report was ever laid before the company. The directors did not know the true state of the company's affairs, or that the balance sheets were delusive. They never exercised any judgment with reference to the accounts, but relied entirely on the manager and auditor. Under these circumstances the Court held that the directors were jointly and severally liable to make good all sums improperly paid out of capital in respect of dividends to the shareholders, directors' remuneration, and bonuses to the manager; and further, that it was the duty of the auditor in auditing the accounts of the company not to confine himself to verifying the arithmetical accuracy of

(*y*) Building Societies Act, 1874, s. 40.

(*z*) 36 Ch. D. 787; 57 L. J. Ch. 46; 36 W. R. 322; 57 L. T. 684.

the balance sheet, but to inquire into its substantial accuracy, and to ascertain that it contained the particulars specified in the articles of association, and was properly drawn up so as to contain a true and correct representation of the state of the company's affairs; and as the improper payments by the directors were the natural and immediate consequence of breach of duty on the part of the manager and the auditor, the manager and auditor were held liable in damages to the amounts so paid, except, in the case of the auditor who had pleaded the Statute of Limitations, so much thereof as was covered by the statute.

Solicitor and surveyor.

A solicitor and a surveyor, though in practice always appointed, are not specially mentioned in the Building Societies Acts among the officers, and there are no statutory provisions relating to them. Their services are chiefly required in connection with the advances made by the society, the surveyor advising the board on the value of the property offered as security for the advance, and the solicitor advising on the title and preparing the mortgage deed. It is usual to pay them according to a fixed scale, which is less than the ordinary rate of payment; but it is a great error to fix the scale too low, as much of the success of the society will depend on the way on which the duties of these officers are discharged, and it is impossible to procure proper professional advice without offering an adequate remuneration.

As to the terms on which the surveyor of a building society has been held to give his services, see *Alexander* v. *Worman* (*a*). In that case the surveyor of a building society did certain work on behalf of the society. The society collapsed for want of funds, whereupon the surveyor brought an action for his commission against one of the managing directors. The Court held that there was

(*a*) 6 H. & N. 100; 30 L. J. Ex. 198; 3 L. T. 477; 25 J. P. 312.

no proof that the defendant had ever contracted that he, or he and his fellow-directors, would pay the plaintiff for his services; and Martin, B., in delivering judgment, said: "We think it a mistake to suppose that, in societies of the kind, the surveyor or secretary or the officers do work and labour upon the same terms as professional men of their class ordinarily do. They generally have a much greater interest in them than the directors, and in the great majority of cases are the individuals who get them up, and at whose request the directors consent to accept the office and take upon themselves the liabilities and duties of their situation; and it is to us very clear that such officers discharge duties and perform services with the understanding on all hands that they are to be remunerated out of the funds, and that if the funds fail the officers must remain unpaid." It is conceived that this decision must be acted on with some caution in the case of an incorporated society, the Act of 1874 expressly providing that the manner of remunerating the officers shall be stated in the rules (*b*).

Corrupt agreement to appoint.

In a late case, a person desirous of being appointed surveyor to a proposed society, agreed, in the event of his obtaining the appointment, to pay one of the promoters a fee of three guineas. The society was duly constituted, under rules which provided that the officers, including the surveyor, should be appointed by the promoters, and the appointment having been made, the promoter sued the surveyor for the promised fee. A Divisional Court (Lord Coleridge, C. J., and Mathew, J.) held that, as the plaintiff was one of the persons whose duty it was to appoint, and he would thus have an interest to appoint a particular person, the agreement was clearly corrupt and illegal, and could not be enforced (*c*).

(*b*) Building Societies Act, 1874, s. 16, sub-s. 6.

(*c*) *Starr* v. *Wall*, 6 Times L. R. 108.

B. *Unincorporated Societies.*

Position of officers of unincorporated societies.

What has been said above as to the powers and duties of the directors and other officers applies also, generally speaking, in the case of unincorporated societies, except that—

(1.) There must necessarily be a treasurer or a trustee or trustees in whom the society's property may be vested, and in whose name actions by and against the society may be instituted;

(2.) The statutory provisions which apply are those of the Act of 1836 and the old Friendly Societies Acts of 1829 and 1834, incorporated with it.

Bound by the rules.

All the officers are bound by the rules, of which they are deemed to have full notice (*d*).

Society may appoint officers.

The society may appoint such treasurer, trustee, or other officers as it thinks necessary, and officers who have to receive or expend moneys of the society are bound, if the rules so require, to execute a bond with two sureties in the following form (*e*):—

Bond to be given by officers.

KNOW ALL MEN BY THESE PRESENTS, that we, A. B. of , treasurer [*or* trustee, &c.] of the Society established at , in the county of , and C. D. of , and G. H. of (as sureties on behalf of the said A. B.), are jointly and severally held and firmly bound to E. F., the present clerk of the peace [*or* town clerk] for the county [*or* county of a city, *or* county of a town, riding, division, *or* place, *as the case may be*] of , in the sum of ; to be paid to the said E. F. as such clerk of the peace [*or* town clerk], or his successor, clerk of the peace [*or* town clerk] of the said county [*or* county of a city, &c.] for the time being, or his certain attorney; for which payment well and truly to be made we jointly and severally bind ourselves, and each of us by himself, our and each of our heirs, executors and administrators, firmly by these presents, sealed with our seals. Dated the day of , in the year of our Lord .

WHEREAS the above-bounden A. B. hath been duly appointed

(*d*) 10 Geo. 4, c. 56, s. 8. (*e*) *Ibid.* s. 11.

treasurer [*or* trustee, &c.] of the Society established as aforesaid, and he, together with the above-bounden C. D. and G. H. as his sureties, have entered into the above-written bond, subject to the condition hereinafter contained; now, therefore, the condition of the above-written bond is such, that if the said A. B. shall and do justly and faithfully execute his office of treasurer [*or* trustee] of the said society established as aforesaid, and shall and do render a just and true account of all moneys received and paid by him, and shall and do pay over all the moneys remaining in his hands, and assign and transfer or deliver all securities and effects, books, papers, and property of or belonging to the said society in his hands or custody to such person or persons as the said society shall appoint, according to the rules of the said society, together with the proper or legal receipts or vouchers for such payments, and likewise shall and do in all respects well and truly and faithfully perform and fulfil his office of treasurer [*or* trustee, &c.] to the said society, according to the rules thereof, then the above-written bond shall be void and of no effect, otherwise shall be and remain in full force and virtue.

How sued on.

In this form, it will be noticed, the clerk of the peace or town clerk is the obligee, and the Act provides that in the event of a forfeiture, the society may sue upon the bond in the name of the clerk of the peace for the time being, on giving him a full indemnity against costs (*f*). Since the Act of 1874, however, which provides that all things required to be done by or sent to the clerk of the peace under the Act of 1836 shall be done by or sent to the registrar (*g*), it would appear that proceedings on such a bond would have to be taken in the name of the registrar on a similar indemnity. As the use of the statutory form is not compulsory, the proper course now is for the bond to be given direct to the trustees of the society.

Committee.

The society may delegate all or any of its powers to a committee, but in all cases where a committee is appointed for any particular purpose, its powers must be reduced into writing and entered in a book by the secretary or clerk of the society, and a majority of the members of such com-

(*f*) 10 Geo. 4, c. 56, s. 11.

(*g*) Building Societies Act, 1874, s. 7.

mittee must always concur in any of its acts. The committee, in all things delegated to them, act for and in the name of the society; but their transactions must be entered in a book belonging to the society, and are subject to the review, allowance or disallowance, and control of the society, as directed by its rules (*h*).

Investment of surplus funds.

The treasurer or trustee of the society may, with its consent, lay out surplus funds not immediately required for the society's purposes, in any of the modes mentioned in the Act of 1829 (*i*).

Treasurers, &c., to render accounts, and pay over balances, &c.

Every person having or receiving any of the moneys, effects, or funds of the society, or entrusted with the disposal, management, or custody thereof, or of any securities, books, papers, or property relating to the same, his executors, administrators, and assigns respectively, must, upon demand made, or notice in writing given or left at his last or usual place of residence, in pursuance of any order of the society, or committee to be appointed for that purpose,

(a) Give in his account at the usual meeting of the society, or to such committee, to be examined and allowed or disallowed; and

(b) Pay over all moneys remaining in his hands, and deliver up all securities and property, taken or standing in his name, or being in his hands or custody, to the treasurer or trustee for the time being, or to such other person as the society or committee shall appoint (*k*).

Justices may hear cases of fraud, and punish by fine or imprisonment.

If any officer, member, or any other person being or representing himself to be a member of the society, or the nominee, executor, administrator, or assignee of any member, or any other person whatever, shall by any false representation or imposition fraudulently obtain possession of the moneys of the society, or, having in his possession

(*h*) 10 Geo. 4, c. 56, s. 12.
(*i*) *Ibid.* s. 13; see *ante*, p. 65.
(*k*) 10 Geo. 4, c. 56, s. 14; *Re Heanor Friendly Society*, 1 Beav. 508; *Re Lord Hill Friendly Society*, 2 J. P. 84.

any sum of money belonging to the society, shall fraudulently withhold the same, and for which offence no especial provision is made in the rules of the society, he may be summoned before the justices, who may award the society double the amount of the money so fraudulently obtained or withheld, together with costs not exceeding ten shillings, to be levied by distress, and, in default of any distress being found, the offender is liable to three months' hard labour (*l*).

Property of society vests in treasurer or trustee for the time being without conveyance.

The assets and property of the society vest in the treasurer or trustee for the time being, and after the death or removal of any treasurer or trustee vest in the succeeding treasurer or trustee, for the same estate and interest as the former treasurer or trustee had therein, and subject to the same trusts, without any assignment or conveyance, except the transfer of stocks and securities in the public funds of Great Britain and Ireland. The treasurer or trustee for the time being may bring and defend actions in respect of the society's property, provided he shall have been thereunto duly authorized by the consent of the majority of members present at any meeting of the society or committee thereof, and no such action will abate by reason of his death or removal from office (*m*).

Probably the true construction of the above provision is that securities taken in the name of the treasurer vest in his successors, and if taken in the name of the trustee or trustees vest in the succeeding trustee or trustees (*n*).

The trustees for the time being can sue on securities given to their predecessors even in a case where the rules of the society provide that on the removal of a trustee he

(*l*) 10 Geo. 4, c. 56, s. 25.

(*m*) 10 Geo. 4, c. 56, s. 21. As to the personal liability of a trustee or treasurer against whom an action is brought, see *Wormwell* v. *Hailstone*, 4 M. & P. 512; 6 Bing. 668; *Harrison* v. *Timmins*, 4 M. & W. 510. The provision in sect. 21 that the trustee may sue and be sued relates only to the form of suing or being sued: *Price* v. *Taylor*, 5 H. & N. p. 544, *per* Wilde, B.

(*n*) *Morrison* v. *Glover*, 4 Ex. p. 443, *per* Alderson, B.

shall assign all securities to the succeeding trustees, and no such assignment has been made (*o*).

In *Walker* v. *Giles* (*p*), one of two trustees resigned and another was appointed in his stead. A question having arisen as to the effect of this appointment, Maule, J., said:—"The effect of the 21st section of the 10 Geo. 4, c. 56, as it seems to me, is to make the continuing and the new trustees joint tenants. It operates as a new appointment of *all*."

Where, however, the amended rules of a society directed that three trustees should be appointed, of whom one should be treasurer, in whose names the funds of the society should be invested, and three trustees were appointed but a fourth person was appointed treasurer, the Court held that these three trustees could not sue the former treasurer for a balance in his hands on account of the society (*q*).

Appointment of new trustees of unincorporated society.

There is no provision in any of the Acts by which unincorporated societies are governed for registering appointments of new trustees. This being a serious disadvantage with reference to the proof of title to land, a practice grew up of inserting the names of the trustees in the rules, and appointing new ones by alteration of rules, or of providing by rule that any new appointments should be certified as alterations. It is only as an alteration of rules therefore that appointments of new trustees can be certified.

Limitation of responsibility of treasurers or trustees.

No treasurer, trustee, or other officer is liable to make good any deficiency which may arise in the funds of the society, unless he shall have declared by writing under his hand, deposited and registered in like manner with the rules of the society, that he is willing so to be answerable;

(*o*) *Morrison* v. *Glover*, 4 Ex. 430; 19 L. J. Ex. 20; 14 L. T. (O. S.) 204; 14 J. P. 84; and see *Cartridge* v. *Griffiths*, 1 B. & Ald. 57.

(*p*) 6 C. B. 662; 18 L. J. C. P. 323; 13 Jur. 588; 13 L. T. (O. S.) 209.

(*q*) *Dewhurst* v. *Clarkson*, 3 E. & B. 194; 23 L. J. Q. B. 247; 2 C. L. R. 1143; 18 Jur. 693; 23 L. T. (O. S.) 109; 18 J. P. 535.

and he may limit his responsibility to such sum as shall be specified in any such writing; but he is personally responsible and liable for all moneys actually received by him on account of the society (*r*).

Liability of officers of society.

This provision does not increase the liability of the treasurer of a building society beyond that of a bailee, in respect of the loss of money immediately after its receipt. Thus, where an action was brought against a guarantee association to make good a sum of 170*l.* which a treasurer, for whom they were sureties, had received, and of which he had been immediately robbed, the Court held that they were not liable. Lord Campbell, C. J., in delivering judgment, said: "This plea (found to be true) alleges a loss of the moneys by *irresistible violence;* and the general doctrine is not denied, that if the subject-matter bailed be lost by *vis major*, which we translate *irresistible violence*, the bailee is discharged. If J. Jones, the principal, was guilty of no default, the defendants, as his sureties, cannot be liable. Reliance, however, is placed on the 6 & 7 Will. 4, c. 32, s. 4, and the 10 Geo. 4, c. 56, s. 20,* by which it is said that as soon as the treasurer of such a society receives any money on account of the society, he, *eo instanti*, becomes a debtor to the society: so that payment alone can discharge him from his liability. But we think this must be confined to such moneys received by him as he might use as his own, he being at liberty to pay the debt with other moneys. He cannot, in respect of one receipt by him as treasurer, be considered at the same time as bailee of specific, ear-marked moneys, and a debtor to the same amount, with the power of discharging his engagement by payment of an equivalent sum from any source, or in any denomination of coin, or in any paper securities which pass as cash. According to the averment in this declaration, J. Jones was undoubtedly bailee of the

* *Qy.* 22.

(*r*) 10 Geo. 4, c. 56, s. 22.

170*l.*, and, therefore, he was not a debtor to that amount. As bailee, the true relation in which he stood to the society, he was discharged by the robbery. If this were not so, his liability would be greater than that of a common carrier; for he would not even be discharged by the act of God or of the Queen's enemies; and indeed Mr. Knowles was driven to contend that if while carrying to the bankers a bag of gold representing the 170*l.* within a few minutes after receiving it an earthquake had swallowed it up, he still would have been debtor to the society for the amount. But we are of opinion that the statutes relied upon were not intended to cast such an extraordinary liability upon an officer of such a society or upon his sureties" (*s*).

Trustees acting ministerially only not liable.

In *Grimes* v. *Harrison* (*t*), the directors of a building society misapplied 800*l.*, part of the funds of the society. The cheques for this sum were signed by the trustees, but as they had acted only ministerially and by the order of the directors the Court held that they were not liable, notwithstanding there was some informality in the authority given to them by the directors. As the trustees, however, instead of simply relying upon their position as mere servants of the directors, took upon themselves to defend and support the transactions in question, they got no costs.

But where two members of a building society, acting as trustees *pro hâc vice* and not being the general trustees of the society, concurred in a transaction which was *ultra vires* and not acquiesced in by all the members, and in the course of it entered into personal covenants for the payment of money under which they were subsequently made liable, it was held that they could not compel contribution

(*s*) *Walker* v. *The British Guarantee Association*, 21 L. J. Q. B. 257; 16 Jur. 885; 19 L. T. (O. S.) 87; 16 J. P. 582.

(*t*) 26 Beav. 435; 28 L. J. Ch. 823; 5 Jur. N. S. 528; 33 L. T. (O. S.) 115; 23 J. P. 421.

among the shareholders to recoup their loss (*u*). The decision would no doubt have been the same had they been the general trustees of the society.

Trustees out of the jurisdiction.

Provision is made by sects. 15 to 19 of the Act of 1829 (*x*), for the conveyance of land or other property in the case of a trustee being out of the jurisdiction, or an idiot, or lunatic, or of unsound mind, or if it shall be unknown or uncertain whether he is living or dead, or if he refuses to convey to the person duly nominated trustee in his stead, and for the transfer of stock and payment of dividends in similar cases; but the procedure under these sections appears to be now obsolete.

Priority of debts due to the society.

One special privilege of unincorporated societies under the Friendly Societies Act of 1834 remains to be noticed and appears to be still available in certain cases, viz., a right to priority of payment out of the assets of their officers. This is derived from sect. 12 of the Act (*y*), which provides that if any officer entrusted with the keeping of the accounts, or having in his hands or possession, by virtue of his office, any moneys or effects belonging to the society, or any deeds or securities relating to the same, shall die, or become insolvent, or have any execution or attachment or other process issued, or action or diligence raised against his lands or goods, or make any assignment thereof for the benefit of his creditors, his heirs, executors, administrators, or assignees, or other persons having legal right, or the officer executing such process, or the party using such action or diligence shall, within forty days after demand made in writing by the order of the society or committee thereof, deliver and pay over all moneys and other things belonging to the society to such person as the society or committee appoints, and pay, out of the estate of

(*u*) *Re Kent Benefit Building Society*, 1 Dr. & S. 417; 30 L. J. Ch. 785; 7 Jur. N. S. 1045; 9 W. R. 686; 25 J. P. 805; 4 L. T. 610.

(*x*) 10 Geo. 4, c. 56, ss. 15—19; *Ex parte Armstrong*, 16 Sim. 296; *Re Eclipse Association*, Kay, App. xxx.; 23 L. J. Ch. 280; 2 Eq. Rep. 318.

(*y*) 4 & 5 Will. 4, c. 40, s. 12.

such person, all sums of money remaining due which such person received by virtue of his office, before any other of his debts are paid, or before the money directed to be levied by such process or recoverable under such diligence, is paid over to the party issuing or using the same.

Bankruptcy.

The priority formerly extended to the case of bankruptcy also, but this is now abolished (*z*). If, however, the estate of a deceased officer who has died insolvent is being administered in the Chancery Division, the priority it seems will still exist (*a*).

Priority, when allowed.

The preference is only allowed in respect of moneys, &c. in the hands of an officer of the society strictly so called (*b*); and the money must be in his hands *virtute officii* and not under any contract (*c*). The right given is one against the common rights of her Majesty's subjects, and therefore those who claim that right must bring themselves within the express provisions of the statute (*d*). But an agreement on the appointment of a treasurer that he shall pay interest on part of the sum placed in his hands will not deprive the society of their statutory priority (*e*). Nor is it necessary that the money or property should be capable of being specifically identified (*f*). And where the treasurer was a partner in a banking firm and the money did

(*z*) Bankruptcy Act, 1883, s. 40; *Ex parte Bailey*, 5 De G. M. & G. 380; 23 L. J. Bkcy. 36; 18 Jur. 988; *In re Williams, Jones* v. *Williams*, 36 Ch. D. 573; 57 L. J. Ch. 264; 36 W. R. 34; 57 L. T. 756.

(*a*) *In re Williams, Jones* v. *Williams*, decided under sect. 14 of the Savings Bank Act, 1863, 26 & 27 Vict. c. 87; *In re Maggi*, 20 Ch. D. 545; 51 L. J. Ch. 560; 30 W. R. 729; 46 L. T. 432.

(*b*) *Ex parte Whipham*, 3 M. D. & De G. 564; 13 L. J. Bkcy. 8; 2 L. T. (O. S.) 426; *Ex parte Orford*, 1 De G. M. & G. 483; 16 Jur. 851; *S. C. nom. Ex parte Oxford*, 21 L. J. Bkcy. 31; *Ex parte Harris*, De G. 162; 14 L. J. Bkcy. 25.

(*c*) *Ex parte Stamford Friendly Society*, 15 Ves. 280; *Ex parte Fleet*, 4 De G. & Sm. 52; 19 L. J. Bkcy. 10; 14 Jur. 685; *Re Shattock*, 5 L. T. 370; and see *Re Heanor Friendly Society*, 1 Beav. 508, where the money had been placed in the hands of an officer jointly with another person.

(*d*) *Per* Fry, J., *In re West of England and South Wales District Bank, Ex parte Swansea Friendly Society*, 11 Ch. D. p. 771; 27 W. R. 596.

(*e*) *Ex parte Ray*, 3 Dea. 537; 1 Mont. & Ch. 50.

(*f*) *In re Atkins, Ex parte Edmunds*, 51 L. J. Ch. 406; 30 W. R. 432; 46 L. T. 240.

not go through his hands but was paid directly to the bank to the credit of the trustees, it was held on the firm becoming bankrupt that the trustees had priority for their balance (*g*).

Officer must be a natural person.

The officer against whom and against whose estate the preferential right is given must be a natural person and not a corporation: see *In re West of England and South Wales District Bank, Ex parte Swansea Friendly Society* (*h*), where a friendly society unsuccessfully attempted to obtain priority of payment out of the assets of a bank then in liquidation, which had been acting as the society's treasurer.

Priority not lost by neglect of society to examine accounts.

Where the secretary of a building society, the rules of which provided that the secretary's accounts should be regularly presented and audited, misappropriated the moneys of the society that came to his hands and died insolvent, Jessel, M. R., held that the society was entitled to priority over the other creditors, and that the society's want of due diligence in examining the accounts was no bar to their claim (*i*).

(*g*) *Ex parte Riddell*, 3 M. D. & De G. 80; 7 Jur. 21; and see *Ex parte Burge*, 1 M. D. & De G. 540; 5 Jur. 346, where the treasurer had invested money of the society upon an insufficient security.

(*h*) 11 Ch. D. 768; 27 W. R. 596.

(*i*) *Moors* v. *Marriott*, 7 Ch. D. 543; 47 L. J. Ch. 331; 26 W. R. 626; 42 J. P. 452; and see also as to negligence by the society *Absolom* v. *Gething*, 32 Beav. 322; 32 L. J. Ch. 786; 9 Jur. N. S. 1263; 8 L. T. 132.

CHAPTER VII.

THE RIGHTS AND LIABILITIES OF MEMBERS.

I. *Incorporated Societies.*

Different classes of members.

It has already been observed (*a*) that the members of a building society are of two classes—those who simply pay their contributions to the society, generally receiving interest in some shape on the amount so paid, and those who borrow money from the society on mortgage. The former are called unadvanced or investing members, the latter advanced or borrowing members, and their rights and liabilities depend not only on the rules of the society, but also on the contract of mortgage into which they have entered. The nature of the mortgages given to a building society by its advanced members, and the cases that have been decided in relation to these securities, will be considered in Chapter VIII., *infra*. For the purpose of raising the funds necessary for carrying on its business an incorporated society is empowered to issue shares of one or more denominations, either paid up in full, or to be paid by periodical or other subscriptions, and with or without accumulating interest, and to repay such funds when no longer required for its purposes (*b*); and it may also issue preference shares. But the manner in which the stock or funds are to be raised, the terms upon which paid-up shares (if any) are to be issued and repaid, and whether preferential shares are to be issued, and if so, within what limits, must all be set forth in the rules of the society (*c*).

(*a*) See *ante*, p. 1.
(*b*) Building Societies Act, 1874, s. 13.
(*c*) *Ibid.* s. 16, sub-s. 2.

It is obvious, therefore, that the society may raise its funds in a variety of ways, and the rights of the members will differ accordingly. There is no fixed capital as in the case of a company under the Companies Acts, but shares are issued from time to time as persons are found ready to take them; and there is no limit to the number that may be issued. In the case of terminating societies, however, it is unusual for anyone to join after the first few months of the society's existence, owing to the number of back payments that will be required in order to place him on an equality with those members who joined at the commencement of the society.

Entrance fee.

It is usual to charge a member who joins the society for the first time a small sum by way of entrance fee.

Who may be members.

Speaking generally, anyone may become a member of a building society, but special provisions apply in the case of certain classes of members, which must now be noticed.

Infants.

An infant may be admitted as a member provided the rules of the society do not prohibit such admission, and may give all necessary acquittances; but during his nonage he cannot vote or hold any office in the society (*d*).

Married women.

By the Married Women's Property Act, 1882, married women are rendered capable, in general terms, of acquiring and holding property, and of contracting in respect of, and to the extent of their separate property as if they were unmarried (*e*). The Act further contains the following special provisions as to building societies:—All shares and interests in any building society which, on January 1st, 1883, were standing in the name of a married woman, are to be deemed to be her separate property until the contrary is shown, and the fact that they are standing in her sole name is sufficient *primâ facie* evidence that she is beneficially entitled thereto for her separate use so as to

(*d*) Building Societies Act, 1874, s. 38.

(*e*) Married Women's Property Act, 1882, 45 & 46 Vict. c. 75, s. 1.

authorise her to receive or transfer the same, and to receive the dividends without the concurrence of her husband, and to indemnify the directors, managers, and trustees of the society in respect thereof (*f*); and all shares and interests which, since January 1st, 1883, may be placed or transferred in or into the sole name of any married woman are deemed, until the contrary is shown, to be her separate property in respect of which her separate estate will alone be liable (*g*). These provisions also apply, so far as the married woman's interest is concerned, to shares and interests standing in the name of herself jointly with any person or persons, other than her husband (*h*), and the husband's concurrence in any transfer is unnecessary whether the shares are standing in the name of the married woman alone, or in her name jointly with some other person or persons (*i*). If, however, any investment in any share, debenture, benefit, right, or claim whatsoever in, to, or upon the funds of any building society shall have been made by a married woman by means of moneys of her husband without his consent, the Court may order such investment and the dividends thereof, or any part thereof to be transferred and paid to him (*k*).

Questions between husband and wife.

In any question between husband and wife as to the title to any property, either party, or the society in whose books any shares of either party are standing, may apply by summons or otherwise in a summary way to any judge of the High Court, or to the judge of the County Court of the district in which either party resides who may make such order as he thinks fit; and the society will in the matter of any such application for the purposes of costs or otherwise, be treated as a stakeholder only (*l*).

Married woman executrix or trustee.

A married woman who is executrix, administratrix, or trustee alone or jointly with any other person or persons,

(*f*) Married Women's Property Act, 1882, 45 & 46 Vict. c. 75, s. 6.
(*g*) *Ibid.* s. 7.
(*h*) *Ibid.* s. 8.
(*i*) *Ibid.* s. 9.
(*k*) *Ibid.* s. 10.
(*l*) *Ibid.* s. 17.

may transfer or join in transferring any share or other interest of or in a building society in that character, without her husband, as if she were a *feme sole* (*m*).

Shares may be held by two or more persons.

Two or more persons may jointly hold a share or shares in any incorporated society; and all shares held jointly by any two or more persons in any society subsisting on November 2nd, 1874 (the time appointed for the commencement of the Act of that year), the rules of which do not prohibit such joint holding, are to be deemed to be lawfully so held (*n*).

The latter part of this provision applies, it will be observed, to *all* societies in existence on November 2nd, 1874, whether they have obtained a certificate of incorporation under the Act of 1874 or not.

Joint-stock companies.

Whether a joint-stock company can become a member of an incorporated building society has never, so far as the writer is aware, been expressly decided. In *Dobinson* v. *Hawks* (*o*), the Vice-Chancellor of England expressed the opinion that a company could not become a member of an unincorporated society. This opinion, however—for it was no more—was founded on the language of the Act of 1836, and has no application, therefore, to the case of an incorporated society.

In a case that came before Mr. Justice Chitty, that learned judge was of opinion, though the point did not call for actual decision, that a company, whose memorandum of association authorized the acquisition of shares in other companies, might lawfully become a member of an incorporated society unless there was some provision in the Building Societies Acts to render such a holding unlawful (*p*).

(*m*) Married Women's Property Act, 1882, s. 18.

(*n*) Building Societies Act, 1874, s. 39.

(*o*) 16 Sim. 407; 12 Jur. 1037; 12 L. T. (O. S.) 238; the headnote in this case goes too far.

(*p*) *Bristol and Clifton Permanent Building Society* v. *Harbour*, June 24th, 1886. As to the meaning of the word "person" in an Act of Parliament, and whether it includes

Industrial and provident societies.

A society registered, or deemed to be registered, under the Industrial and Provident Societies Act, 1876, may, if its rules so allow, invest any part of its capital in the shares or on the security of any society registered under the Building Societies Acts, provided that no such investment be made in the shares of any society other than one with limited liability, and a society so investing may make such investment in its registered name, and shall be deemed to be a person within the meaning of the Building Societies Act, 1874, and any investment made before the 11th August, 1876, which would have been valid if the Act had been then in force, is made valid and confirmed (*q*).

Executor.

An executor may become a member. Where an executor joined a society and mortgaged leaseholds of his testator to secure an advance, the mortgage deed showing on the face of it that the money was borrowed for executorship purposes, Malins, V.-C., held that there was no objection to the mortgage except in so far as it purported to be a security not only for repayment of what might become due from the borrower *quâ* executor, but also for any sums which might be due from him individually if he subscribed for other shares in the society; this latter clause his lordship considered to be at variance with the rest of the deed, and therefore inoperative (*r*). It is believed to be not unusual for societies to advance money to executors, but they should exercise some caution in doing so.

The books of the society are *primâ facie* evidence of membership (*s*).

Payment to registered owner of shares.

Payment to a registered owner of shares, without notice that he is only a trustee, will discharge the society from

a corporation, see *The Pharmaceutical Society* v. *The London and Provincial Supply Assoc. Limited*, 5 App. Cas. 857; 28 W. R. 957; affirming the decision below, 5 Q. B. D. 310; 49 L. J. Q. B. 338; 28 W. R. 608; 42 L. T. 569.

(*q*) Industrial and Provident Societies Act, 1876, 39 & 40 Vict. c. 45, s. 12, sub-s. 4.

(*r*) *Cruikshank* v. *Duffin*, 13 Eq. 555; 41 L. J. Ch. 317; 20 W. R. 354; 26 L. T. 121; 36 J. P. 708.

(*s*) *Dobinson* v. *Hawks*, 16 Sim. 407; 12 Jur. 1037; 12 L. T. (O. S.) 238.

liability to the real owner, even though the payment may have been attended with a certain amount of irregularity (*t*).

Allan v. *Urquhart.*

In *Allan* v. *Urquhart* (*u*), the manager of an investment society assigned his shares in the society as security for a loan. No notice was given to the directors, and no alteration was made in the shareholders' ledger, which was the only register of members kept by the society. In an action brought by the assignees against the society, it was held that the knowledge of the manager was not equivalent to knowledge on the part of the society, and that the society was not liable for a payment made to the manager on account of his shares after the date of the assignment.

Shares not within 9 Geo. 2, c. 36.

Shares in a building society, it was held, were not within the old Mortmain Act, 9 Geo. 2, c. 36, and might therefore be bequeathed to a charity (*x*).

Do not pass under bequest of "moneys."

A bequest of "all moneys, both in the house and out of it," will not carry shares in a building society (*y*).

Instalments, when liable to arrestment in Scotland.

The instalments paid by a borrowing member of an unincorporated society, the rules of which provided that the borrower should take shares to the full amount of his loan, and that the instalments as they were paid should be carried to the credit of his share account, were held in Scotland to be not liable to arrestment, where at the date of the arrestment the amount of the loan made to the member exceeded the sum standing to his credit on his share account (*z*).

Limitation of liability of members.

The liability of the members of an incorporated society is expressly limited by the Act of 1874, sect. 14 of which is in the following terms:—

"The liability of any member of any society under this Act in respect of any share upon which no advance has been made shall be limited to the amount actually paid

(*t*) *Nolloth* v. *The Simplified Permanent Benefit Building Society*, 53 L. T. 859; 34 W. R. 73; 2 Times L. R. 97.

(*u*) 15 R. 56; 25 Sc. L. R. 47.

(*x*) *Entwistle* v. *Davis*, 4 Eq. 272; 36 L. J. Ch. 825; 31 J. P. 708.

(*y*) *Collins* v. *Collins*, 40 L. J. Ch. 541; 24 L. T. 780.

(*z*) *Wilson* v. *Carrick*, 18 Sc. L. R. 657.

or in arrear on such share, and in respect of any share upon which an advance has been made shall be limited to the amount payable thereon under any mortgage or other security or under the rules of the society."

The liability of the two classes of members is therefore not the same. An *investing* member is liable only for the amount actually paid or in arrear on his shares; an *advanced* member is liable for the amount payable on his shares, either under the mortgage or other security, or under the rules of the society. The meaning of the section was discussed in *Brownlie* v. *Russell* (*a*). In that case the rules of the society provided that the shares should be of the value of 25*l.* each, payable by certain instalments, and should be treated as paid-up shares when the amounts to be credited to the member had arrived at the full sum of 25*l.* A member took twenty-eight shares, on which he obtained an advance of 700*l.* secured by mortgage in the usual way; when he had repaid instalments of principal to the amount of 414*l.*, the society was ordered to be wound up. There were no outside creditors. The member having subsequently given notice of withdrawal under the rules, questions arose as to the terms on which he was entitled to withdraw. The Lord Chancellor (Earl of Selborne), in giving judgment in favour of the member, said:—

"Then the next thing which I observe (and it is so far common to both classes of members) is that this is a society in which the liability of each member is strictly limited in point of amount. The rules say that the shares shall be of the value of 25*l.* each, payable by certain instalments; and under the 5th rule they are to be treated as paid-up shares when the amounts to be credited to the member have arrived at the full sum of 25*l.* If there were nothing

(*a*) 8 App. Cas. 235; 48 L. T. 881; 47 J. P. 757; 10 R. (H. L.) 19; 20 Sc. L. R. 481: affirming, with a variation, the decision below, 8 R. 917; 18 Sc. L. R. 661.

but the rules, I should say that this is a clear case of a liability limited to the amount of 25*l.* per share. But, over and above the rules, the Act of 1874, under which the society is governed, says expressly, 'the liability of any member of any society under this Act in respect of any share upon which no advance has been made, shall be limited to the amount actually paid or in arrear on such share.' In favour, therefore, of the unadvanced member, the statute reduces the liability to a lower point than the full 25*l.*—he is only to be liable (which I think means either to creditors or to anybody else) for that which is actually in arrear at the time when the liability is to be enforced, in addition to what he has actually paid. The clause then goes on to state, 'And in respect of any share upon which an advance has been made, the liability of any member shall be limited to the amount payable thereon under any mortgage or other security or under the rules of the society.' Now, under the rules of this society, no share is to be more than 25*l.* The liability, if it depended upon the rules alone, would be only 25*l.* per share, whether it was advanced or unadvanced. The mortgage in this case is given for the full amount which is advanced, namely, 25*l.* upon each of the twenty-eight shares held by the present respondent, making in the whole 700*l.*; and there is nothing whatever in the rules to increase the liability beyond the mortgage. The result is that 25*l.* per share, or 700*l.* in the whole, having been advanced upon these shares, 414*l.* had been actually repaid by the instalments required under the rules before the winding-up order was made, and there remained to be made up in some way or other (that is, there remained payable) 286*l.* at that time. . . . . Therefore, the maximum sum required in order to reach the full limit of liability in respect of these shares was, at the date of the winding-up order, 286*l.*"

In his judgment in *Re Sheffield and South Yorkshire*

Building Society (*b*), where the question was as to the liability of a member who had withdrawn, Mr. Justice Cave seems to have expressed a different view of the meaning of the section. The learned judge said (*c*): "This is a case of a building society under the Building Societies Act of 1874, s. 9 of which provides that such society shall become a body corporate; and the result follows that the creditors must look to the corporate assets, and to them only, for payment of the debts of the society, unless they can show that some statute has imposed a liability on individuals, in addition to the liability which is established, as against the effects of the corporate body. Nothing of that sort is to be found. The only thing to be found on that point is sect. 14, which (as I have said) is confined to the liability of members, and does not extend to the liability of past members. That is not only the object of the section, but the words themselves point in the same direction. 'The liability of any member of any society under this Act in respect of any share upon which no advance has been made, shall be limited to the amount actually paid or in arrear on such share.' First, leave out the words 'or in arrear.' Suppose one man had been a member for a year, and had paid 18*l.*, and another had been a member for two years and had paid 36*l.*, the liability of each would be limited to the amount actually paid, viz., 18*l.* or 36*l.* respectively, and, if more were demanded, it would be something *in addition* to what was paid. But there are the words 'amount in arrear,' which do, I think, enable the liquidators to call on existing shareholders to pay up their subscriptions, and these, when paid, are to be devoted to the discharge of the liabilities of the society. But I see nothing there which can apply to a man who has *ceased* to be a member, and who consequently has not and cannot have any arrears, because his payments have come to an

(*b*) 22 Q. B. D. 470; 58 L. J. Q. B. 265; 60 L. T. 186; 53 J. P. 375; 5 Times L. R. 192.
(*c*) 22 Q. B. D. p. 477.

end." And, further on in his judgment, the learned judge speaks of the liability of a member as limited to the amount already paid, "or which he has to pay until maturity of his share." In another case (*d*), Lord Justice Lindley made some observations on sect. 14, and seemed to agree (though the report is not very clear) with the opinion expressed by Cave, J. It is submitted, with very great respect, that this is not the meaning of the section. The contract in the case of subscription shares is that the member shall pay so much per week or per month, as the case may be, and if he makes these payments regularly as they fall due, he is never in arrear, for no one can be said to be "in arrear" with a payment unless he has failed to make it at the stipulated time. The amount he has already paid into the hands of the society is no doubt liable to its debts, and must be dealt with accordingly; but if he has paid his subscriptions as they become due, he has done all that can be required of him, and neither in a liquidation nor under any other circumstances can he be made to pay anything more. See further as to the liability of unadvanced members, Chapter X., *post*, p. 221.

Rules are binding on members and others.

The rules of the society are binding on the several members and officers of the society, and on all persons claiming on account of a member, or under the rules, all of whom will be deemed and taken to have full notice thereof (*e*).

And on the society.

The rules are no less binding on the society. In fact, they form the contract between the society and its members, and that contract can only be altered in the mode prescribed by the Act; and any attempt on the part of the society to alter it in some other way, as for instance, by a resolution passed by a majority of the members present at the annual meeting, is nugatory (*f*).

(*d*) *Sibun* v. *Pearce*, 44 Ch. D. p. 372; 38 W. R. 658; 62 L. T. 388; 63 L. T. 123; 6 Times L. R. 262.

(*e*) Building Societies Act, 1874, s. 21.

(*f*) *Auld* v. *Glasgow Working*

As between the society and its members a course of dealing at variance with the rules, for whatever length of time it may be pursued and acquiesced in, is of no validity whatever (*g*) ; nor does the fact that the funds have been systematically misapplied and the society converted into a freehold land society release the members from their obligation to observe the rules when called upon to do so (*h*). Variation from rules.

As to how far an advanced member is bound by an alteration of rules made subsequently to the date of his advance and imposing a greater burden upon him in the event of his desiring to redeem, see *post*, p. 156 ; and as to alterations of rules affecting withdrawing members, see *post*, p. 137. Alteration of rules.

Every member is entitled to receive from the society a copy of its annual account and statement duly audited (*i*). Annual account.

It is the invariable practice of building societies to impose fines upon members who make default in paying their subscriptions at the proper time. There appears to be no limit in the case of an incorporated society to the amount which may be thus charged, but the society must state in its rules what the fines for unpunctual payment will be (*k*). In the case of an unincorporated society, however, the fines and forfeitures must be "reasonable." See as to the meaning of this elastic term and as to fines and forfeitures generally, *infra*, p. 140, where the authorities are collected. Fines and forfeitures.

The following powers appear to be vested in the meetings of members :— Powers of meetings.

In the absence of any direction in the rules as to the

Men's Building Society, 12 App. Cas. 197 ; 14 R. 27 ; 24 Sc. L. R. 486 ; 35 W. R. 632 ; 56 L. T. 776 ; 3 Times L. R. 378.

(*g*) *Watson* v. *Bendigo Permanent Land and Building Society*, 10 Vict. L. R. (Law), 26.

(*h*) *Grimes* v. *Harrison*, 26 Beav. 435 ; 28 L. J. Ch. 823 ; 5 Jur. N. S. 528 ; 33 L. T. (O. S.) 115 ; 23 J. P. 421 ; *Re Kent Benefit Building Society*, 1 Dr. & Sm. 417 ; 30 L. J. Ch. 785 ; 7 Jur. N. S. 1045 ; 9 W. R. 686 ; 4 L. T. 610 ; 25 J. P. 805 ; *R.* v. *D'Eyncourt*, 4 B. & S. 820 ; 9 L. T. 712 ; 28 J. P. 116 ; *S. C. nom. Hughes* v. *Layton*, 33 L. J. M. C. 89 ; 10 Jur. N. S. 513 ; *nom. Hughes* v. *D'Eyncourt*, 3 N. R. 420 ; 12 W. R. 408.

(*i*) Building Societies Act, 1874, s. 40.

(*k*) *Ibid.* s. 16, sub-s. 13.

manner of changing the chief office of the society, it can only be changed by a general meeting specially called for the purpose (*l*).

Where the rules do not provide for the manner of electing arbitrators, they must be elected at the first general meeting of the society, and in the event of the death of any arbitrator, or his refusal or neglect to act, it is for a general meeting to elect another arbitrator in his stead (*m*).

The yearly account and statement of the society's affairs must be presented at an annual or other general meeting (*n*).

A general meeting can also—

(a) Direct what security other than that of a bond in the statutory form shall be given by any officer having receipt or charge of money, and fix the amount of such security (*o*);

(b) Appoint a person to whom on due demand or notice an officer shall pay over moneys and deliver securities and property of the society remaining in his hands (*p*);

(c) Appoint trustees for the purpose of investments in the public funds or upon security of copyhold or customary estate under sect. 25 (*q*);

(d) Appoint, and require the lord to admit as tenants, not more than three persons to be trustees on behalf of the society of any hereditaments of copyhold or customary tenure to which the society is entitled as equitable mortgagee (*r*);

(e) Determine upon the payment to administrators of balances of purchase-money, not exceeding 150*l*., due to infant heirs of advanced members (*s*);

(*l*) Building Societies Act, 1877, s. 2.
(*m*) Building Societies Act, 1874. s. 34.
(*n*) *Ibid.* s. 40.
(*o*) Building Societies Act, 1874, s. 23.
(*p*) *Ibid.* s. 24.
(*q*) *Ibid.* s. 25.
(*r*) *Ibid.* s. 28.
(*s*) *Ibid.* s. 30.

(f) Determine upon the purchasing, building, hiring, or taking on lease of a building or land for conducting the society's business, and adapting, furnishing, selling, exchanging, or letting such building (*t*).

Where a certain majority is required.

The following matters can only be transacted by particular majorities of members :—

Three-fourths of the members present at a meeting called for the purpose may pass a resolution for changing the society's name (*u*).

Three-fourths of the members holding not less than two-thirds of the whole number of shares may—

(a) Agree on the terms of union with another society, or on the terms of the transfer of the society's engagements to another society (*x*) ;

(b) Consent to the dissolution of the society by signing the instrument of dissolution, or consent to alterations in the instrument in like manner (*y*).

Meetings of members.

The manner of calling general and special meetings of the members must be specified in the rules of the society (*z*).

Special meeting.

Where the rules required that no action should be brought or defended without the sanction of a majority of members present at "*a special meeting*," it was held that the sanction of a majority present at *a special general meeting* was sufficient (*a*). "The meaning of a special meeting is that the meeting shall not be convened unless the parties have notice of the purpose of meeting. A meeting may be both general and special—general for the purpose of doing general business, and special for a particular purpose, then it becomes a special general meeting" (*b*).

(*t*) Building Societies Act, 1874, s. 37.
(*u*) *Ibid.* s. 22. As to alteration of rules, see *ante*, pp. 42, 63.
(*x*) *Ibid.* s. 33.
(*y*) *Ibid.* s. 32.
(*z*) Building Societies Act, 1874, s. 16, sub-s. 7.
(*a*) *Cutbill* v. *Kingdom*, 1 Ex. 494 ; 17 L. J. Ex. 177.
(*b*) *Per* Alderson, B., 1 Ex. p. 504.

General law applies.

The general law applicable to meetings of shareholders applies to the meetings of members of a building society. In order that a resolution come to at a meeting may have any legal effect, it is necessary that the meeting shall be duly convened; that a proper number of persons shall be present, and there must always be two at least; that the resolution should relate to a matter upon which the meeting is competent to pass a resolution; and that the resolution should be duly passed (*c*).

Amendments.

An amendment may be moved, and if it is sufficiently definite the chairman is bound to put it to the meeting (*d*).

Majority.

In the absence of special provision to the contrary, the resolution come to by the majority of those present is the resolution of the meeting (*e*).

Mode of voting.

The regular mode of voting is by show of hands, and a rule giving every member one vote for every share only applies to cases where a poll is demanded (*f*).

Proxies.

Absent members are not entitled to vote by proxy unless they are specially empowered so to do by the rules, and the terms of any provision authorizing such a mode of voting must be strictly complied with (*g*).

Power of chairman.

The chairman of a general meeting has *primâ facie* authority to decide all incidental questions which arise at the meeting and require decision at the time, and the entry by him in the minute book of the result of a poll, or of his decision of all such questions, though not conclusive, is *primâ facie* evidence of that result or of the correctness of that decision, and the *onus* of displacing that evidence is thrown on those who impeach the entry (*h*).

(*c*) Lindley on Company Law, p. 305, 5th ed.; and see also, as to notice of meeting, *Alexander* v. *Simpson*, 43 Ch. D. 139; 59 L. J. Ch. 137; 38 W. R. 161; 61 L. T. 708; 1 Meg. 457; 6 Times L. R. 20, 72.

(*d*) *Henderson* v. *Bank of Australasia*, 45 Ch. D. 330; 59 L. J. Ch. 794; 2 Meg. 173, 301; 62 L. T. 869; 63 L. T. 597; 6 Times L. R. 424.

(*e*) *In re Horbury Bridge Coal, Iron, and Waggon Co.*, 11 Ch. D. 109; 48 L. J. Ch. 341; 27 W. R. 433; 40 L. T. 353.

(*f*) *Ibid.*

(*g*) *Harben* v. *Phillips*, 23 Ch. D. 14; 31 W. R. 173; 48 L. T. 334.

(*h*) *In re Indian Zoedone Co.*, 26 Ch. D. 70; 53 L. J. Ch. 468; 32 W. R. 481; 50 L. T. 547.

Poll.

The right of a shareholder to demand a poll has not been decided; but the right would probably be held to exist unless the contrary could be shown. The demand should be made immediately after the declaration of the show of hands, and the poll may be taken at once without adjourning the meeting (*i*).

Shares may be transferred.

In the absence of any provision to the contrary in the rules, it is conceived that shares in a building society are freely transferable by the members, though the point does not seem to have ever been actually decided. In the case of ordinary joint stock companies it is well settled that where certain definite restrictions are placed on the right to transfer shares, the directors have no implied authority to impose any further restriction (*k*), nor does a right to object to a transferee enable them to object to a transfer to an unobjectionable person, though made for a purpose the directors disapprove (*l*). If, as often happens, shares are made transferable with the assent of the board of directors, the power of assenting or dissenting to a transfer is reposed in them as trustees, and must not be exercised capriciously, though the directors are not bound to disclose their reasons for rejecting a proposed transferee, provided they have fairly considered the question at a board meeting; and in the absence of evidence to the contrary, the Court will assume that they have acted reasonably and *bonâ fide* (*m*). If, however, there is evidence to show that directors who have such a power have exercised it capriciously or unfairly, the Court has jurisdiction to interfere (*n*). These principles would seem to apply equally to the case of a building society.

(*i*) Lindley on Company Law, p. 311, 5th ed.
(*k*) *Ibid.* p. 465.
(*l*) *Moffat* v. *Farquhar*, 7 Ch. D. 591; 47 L. J. Ch. 355; 26 W. R. 522; 38 L. T. 18.
(*m*) *Ex parte Penney, Re Gresham Life Assurance Co.*, 8 Ch. 446; 42 L. J. Ch. 183; 21 W. R. 95, 186; 28 L. T. 150.
(*n*) *Ibid.*

Forged Transfers Act, 1891.

The Forged Transfers Act, 1891 (*o*), applies to an incorporated building society as if it were a company; see *supra*, p. 53.

Payment of sums not exceeding 50*l.* when members die intestate.

If any member of or depositor with a society having in its funds a sum of money not exceeding fifty pounds die intestate, the amount due may be paid to the person who shall appear to the directors or committee of management of the society to be entitled under the Statute of Distributions to receive the same, without taking out letters of administration, upon the society receiving (1) satisfactory evidence of death, and (2) a statutory declaration that the member or depositor died intestate, and that the person so claiming is entitled as aforesaid. If the society, after the decease of any member or depositor, has paid any such sum of money to the person who at the time appeared to be entitled to the effects of the deceased under the belief that he had died intestate, the payment will be valid and effectual with respect to any demand from any other person as next of kin or as the lawful representative of such deceased member or depositor against the funds of the society, though such next of kin or representative will have his remedy for the amount of the payment against the person who has received the same (*p*).

Payment to persons appearing to be next of kin declared valid.

Provision for the case of a member dying intestate leaving an infant heir.

Whenever a member who has executed a mortgage to the society dies intestate, leaving an infant heir or infant co-heiress, the society, after selling the premises so mortgaged to them, may pay to the administrator or administratrix of the deceased member any money, to the amount of one hundred and fifty pounds, which shall remain in their hands after paying the amount due to them and the costs and expenses of the sale, without being required to pay the same into the Post Office Savings Bank, as provided by the Trustee Relief Act, and the Acts amending

(*o*) 54 & 55 Vict. c. 43, s. 3; and see 55 & 56 Vict. c. 36.

(*p*) Building Societies Act, 1874, s. 29.

or extending the same. Such sum of one hundred and fifty pounds will be considered as personal estate, and liable to duty accordingly (*q*).

This provision, it will be seen, applies only where the four following conditions are fulfilled:—(1) The deceased member must have executed a mortgage to the society; (2) he must have died intestate; (3) his heir must be an infant; (4) the surplus sale moneys must not exceed 150*l*. In such a case the society must pay the administrator instead of paying the money into Court; and, if they perversely adopted the latter course, they would no doubt have to pay the costs of getting the money out again.

Withdrawal.

It is the right of every investing member of a building society, whether incorporated or unincorporated, to retire from the society and require the return of the amount that he has paid for subscriptions. This right of "withdrawal," as it is called, is an essential part of his contract, and the rules of every society must set forth the terms on which it may be exercised (*r*). These terms must be *bonâ fide* ones. A rule absolutely forbidding withdrawal will not be registered, nor will a merely colourable provision for the purpose. In terminating societies, however, especially those which lend money without interest, the registrar, it seems, does not object to a rule withholding the right of withdrawal for the first few years of the society's existence; see *ante*, p. 30. The rules generally require a certain length of notice to be given by a member who desires to withdraw, and it is also usual to limit in some way the amount that may be withdrawn from the society in any one year. There is no objection to provisions of this kind.

In some societies the rules speak of "withdrawing a share," which is the expression used in sect. 16 of the Act of 1874; in others, they speak of the "withdrawal of the

(*q*) Building Societies Act, 1874, s. 30.

(*r*) Building Societies Act, 1874, s. 16, sub-s. 4.

member" himself, the phrase used in sect. 1 of the Act of 1836; and in others again, they speak of "withdrawing the amount standing to the credit of the member in the books of the society." There is no real difference in meaning between these expressions; the substance of the thing in every case is that the member may require the return of the money he has paid for subscriptions and terminate his connection with the society. It is obvious that the exercise of a right of this kind may well give rise to difficult questions, and many such questions have in fact arisen, particularly in the winding-up of building societies. These will be discussed in the chapter on winding-up, *infra*, p. 236; here it is proposed to notice only the cases that have been decided as to the position of a withdrawing member when the society is still a going concern and no winding-up has supervened.

Withdrawing member who has been repaid.

A member who has given notice of withdrawal and been repaid the amount of his subscriptions ceases to be a member for all purposes, whether the society is incorporated (*s*), or unincorporated (*t*). His connection with the society is entirely at an end, and he is free from all liability, even in the event of a winding-up.

Member whose notice to withdraw has not expired.

On the other hand, a member who has given notice to withdraw, but whose notice has not yet expired, clearly remains a member for all purposes; and if, while his notice is running, a winding-up order is made, or the society makes a virtual admission of its insolvency, the notice is *ipso facto* annulled, and never comes to maturity (*u*).

Member whose notice has expired, but who remains unpaid.

There remains a third case, viz., that of a member whose notice has expired, but who has not yet been paid; and it seems that a person in this position, though he may often

(*s*) *Re Sheffield and South Yorkshire Building Society*, 22 Q. B. D. 470; 58 L. J. Q. B. 265; 60 L. T. 186; 5 Times L. R. 192; 53 J. P. 375.

(*t*) *Re West Riding of Yorkshire Permanent Benefit Building Society, Ex parte Charnock*, 45 Ch. D. 463; 59 L. J. Ch. 823; 39 W. R. 74; 63 L. T. 483.

(*u*) See as to this, *infra*, p. 241, and the cases there cited.

be entitled to be paid out of the assets in priority to other members, and thus be spoken of as a creditor or quasi-creditor, yet remains in effect a member of the society, and must be treated accordingly. "Now, what is the position of a member who has given notice of withdrawal, but who has not been paid back the amount due to him for his subscriptions? Some say he is a member; some say he is a creditor. The true mode of describing him is to describe him as a member who has given notice of withdrawal, and is entitled to payment. That he is not an ordinary creditor is plain. He cannot come into competition with outside creditors. On the other hand, as between himself and the continuing members, he is entitled to be paid the amount due to him before they can divide the assets. In that sense he is a creditor; and that was decided in *In re Blackburn and District Benefit Building Society* (*x*), which afterwards went to the House of Lords" (*y*).

Withdrawing member is bound by rules.

Thus, it has been decided that such a member is bound by a rule referring disputes between the society and any member to arbitration (*z*); and his vote must be taken into account in ascertaining the statutory majority required to sign an instrument of dissolution under sect. 32 of the Act of 1874, even though the rules provide that a member who has given notice of withdrawal shall cease to take part in the affairs of the society (*a*); and he will also, it seems, be bound by alterations in the rules made subsequently to the expiration of his notice

(*x*) 24 Ch. D. 421.

(*y*) *Per* Lindley, L. J., in *Sibun* v. *Pearce*, 44 Ch. D. p. 371; 38 W. R. 658; 62 L. T. 388; 63 L. T. 123; 6 Times L. R. 262.

(*z*) *Walker* v. *General Mutual Building Society*, 36 Ch. D. 777; 57 L. T. 574; 3 Times L. R. 847; 52 J. P. 278; *Armitage* v. *Walker*, 2 K. & J. p. 222; 2 Jur. N. S. 13; 26 L. T. (O. S.) 182; 20 J. P. 53; *Huckle* v. *Wilson*, 2 C. P. D. 410; 26 W. R. 98; *Wright* v. *Deeley*, 4 H. & C. 209; 30 J. P. 631; W. N. (1866), 74; *Davies* v. *Second Chatham Building Society*, 61 L. T. 680; *Mitchells* v. *Caledonian Building Society*, 13 R. 918; 23 Sc. L. R. 651; see *infra*, p. 196.

(*a*) *Sibun* v. *Pearce*, 44 Ch. D. 354; 38 W. R. 658; 62 L. T. 388; 63 L. T. 123; 6 Times L. R. 262.

of withdrawal (*b*). Where, however, the rules provided that any person who should give notice to withdraw his invested shares should thereupon *cease to be a member of the society* (in respect of the shares withdrawn) and forfeit all interest therein, Mr. Justice North, though not actually deciding the point, was inclined to think that a withdrawing member would not be bound (*c*); but where the rules provided that a person who should give notice to withdraw the *whole* number of his shares should thereupon cease to be a member, and a shareholder gave notice to withdraw some of his shares, then a dispute arose, and then he gave notice to withdraw the remaining shares, the Court held that he was bound (*d*). It is clear, too, that a person who has given notice of withdrawal if not strictly a member is at least a person claiming on account of a member, and may be bound in that capacity. "I do not think that the plaintiff has ceased to be a member because he has given notice; but if he have, he at any rate is a person claiming on account of a member, because his sole claim is to receive back payments made by himself in the character of member" (*e*).

The terms on which a member may withdraw being set forth in the rules, the society has no power to vary them, except by altering its rules, and any attempt to vary the terms in some other way, as, for instance, by resolution of a general meeting, will be futile (*f*).

(*b*) *Davies* v. *Second Chatham Permanent Benefit Building Society*, 61 L. T. 680.

(*c*) *Christie* v. *Northern Counties Permanent Benefit Building Society*, 43 Ch. D. 62; 59 L. J. Ch. 210; 38 W. R. 280; 61 L. T. 796; and see *Armitage* v. *Walker*, 2 K. & J. p. 222.

(*d*) *Mackenzie* v. *Everton and West Derby Permanent Benefit Building Society*, 61 L. T. 680.

(*e*) *Per* Fry, L. J., in *Walker* v. *General Mutual Building Society*, 36 Ch. D. p. 786; 57 L. T. 574; 3 Times L. R. 847; 52 J. P. 278; *Mackenzie* v. *Everton, &c. Society*, 61 L. T. 680.

(*f*) *Auld* v. *Glasgow Working Men's Building Society*, 12 App. Cas. 197; 14 R. 27; 24 Sc. L. R. 486; 35 W. R. 632; 56 L. T. 776; 3 Times L. R. 378, reversing the decision below; 12 R. 1320; 22 Sc. L. R. 883.

As to the position of withdrawing members in the event of a winding-up, see Chapter X., p. 236, *infra;* and as to cancellation of a notice to withdraw and interest on the amount withdrawn, see *infra*, p. 245.

II. *Unincorporated Societies.*

Unincorporated societies.

What has been said above with regard to the members of incorporated societies is true, generally speaking, of the members of unincorporated societies, but subject, of course, to such distinctions as arise from the different statutory provisions applicable in the two cases. The Acts of 1874, 1875, 1877, and 1884, and the Treasury Regulations have no application to the members of an unincorporated society; their rights are regulated by the provisions of the Act of 1836 (*g*), and the old Friendly Societies Acts of 1829 (*h*) and 1834 (*i*) incorporated with it. The effect of these provisions is as follows:—

Minors may be members, and have legal authority to act.

A minor may become a member, and may execute all instruments, give all necessary acquittances, and enjoy all the privileges, and will be liable to all the responsibilities appertaining to members of full age, notwithstanding his incapacity, provided that his admission into the society was with the consent of his parents, masters, or guardians (*k*).

Notwithstanding this provision, however, the opinion appears to be entertained at the Central Office that minors cannot properly be members of an unincorporated society, and rules to this effect will not be certified.

Married women.

As to married women holding shares in a building society, see *ante*, p. 120.

Joint holders and companies.

As to joint holders of shares, and as to companies becoming members, see *ante*, p. 122.

Value of shares.

The shares in an unincorporated society must not exceed

(*g*) 6 & 7 Will. 4, c. 32.
(*h*) 10 Geo. 4, c. 56.
(*i*) 4 & 5 Will. 4, c. 40.
(*k*) 10 Geo. 4, c. 56, s. 32.

150*l.* in value, but there is nothing to prevent persons from subscribing for more than one share (*l*).

Rules bind members and officers.

The rules are binding on the members and officers and their representatives, all of whom will be deemed and taken to have full notice thereof (*m*); and the book in which the rules are entered must be open to the inspection of the members at all reasonable times (*n*).

Fines, penalties, and forfeitures.

Reasonable fines, penalties, and forfeitures may be imposed upon members who offend against the rules (*o*); but they must be "reasonable," otherwise they cannot be enforced, at any rate in so far as they are intended to secure the due payment of money. "Nothing," said Sir George Jessel, M. R., in *Lovejoy* v. *Mulkern* (*p*), "is better established than this, that in a Court of Equity you cannot enforce a penalty for non-payment of money by a given day. You can obtain interest, but you cannot even obtain increased interest, that being considered a penalty . . . This Act enables them [benefit building societies] to inflict fines for non-payment of money at a given day, and to enforce the payment of such fines, but subject to this, that they must be reasonable fines. In other words, the rule of equity is broken into only to the extent that the fines are reasonable, and if the fines are not reasonable they are not protected by the provisions of the Act." In that case the plaintiff received an advance of 1,400*l.* in respect of twenty-eight 50*l.* shares which he held in the society, the loan being repayable in five years by sixty monthly instalments of 31*l.* 10*s.* each. He made default in his repayments, and in a redemption action which he subsequently instituted, the question arose as to the amount the society was entitled to claim for fines. The rules contained a table showing

(*l*) 6 & 7 Will. 4, c. 32, s. 1; *Morrison* v. *Glover*, 4 Ex. 430; 19 L. J. Ex. 20; 14 L. T. (O. S.) 204; 14 J. P. 84.

(*m*) 10 Geo. 4, c. 56, s. 8; see the corresponding provision in the case of incorporated societies, *ante*, pp. 128 *et seq.*

(*n*) 10 Geo. 4, c. 56, s. 7.

(*o*) 6 & 7 Will. 4, c. 32, s. 1.

(*p*) 37 L. T. p. 78; 46 L. J. Ch. 630.

the fines payable by advanced members who made default in payment of their monthly instalments for any number of months up to six, and for any number of shares up to ten. Thus, in the case of one share, the fine for non-payment of an instalment was for the first month 6*d.*, for the second month 1*s.* for the third month 2*s.*, and so on, up to six months. For ten shares the fine was in each case ten times the above amount, viz., 5*s.*, 10*s.*, 1*l.*, and so on. But the table went no further, and there was nothing to show what fine (if any) was payable for default in the seventh or any subsequent month, or what was to be paid for any number of shares above ten. Under these circumstances the society contended that they were entitled to charge fines increasing at the above rate on every instalment that fell into arrear, and in respect of each share; and as all the instalments were then overdue, they claimed the sum of 2,936*l.* 5*s.* 11*d.* on this account. The Master of the Rolls held that this was unreasonable, and that according to the true construction of the rules, no fine could be charged for default in payment after the sixth month. At the end of the sixth month, he said, the society were entitled to 6*d.*+1*s.*+2*s.*, &c., the aggregate amount being 15*s.* 6*d.* per share, and no delay in repayment after the sixth month could entitle them to anything further. Consequently they were entitled to twenty-eight times 15*s.* 6*d.*, or 21*l.* 14*s.* in all. On appeal, the Court of Appeal (Lord Coleridge, C. J., James and Baggallay, L. JJ.) held that neither of the above constructions was correct. They agreed with the Master of the Rolls that 5*s.* was the maximum amount that could be charged, but they held that this sum must be paid on every instalment in arrear, and in respect of each share, and they accordingly allowed the society $5 \times 28 \times 60$ shillings, or 420*l.* on account of fines.

In another case (*q*), the rules provided that mortgagors neglecting to make their monthly repayments should be

(*q*) *Re Tierney's Estate*, Ir. R. 9 Eq. 1; 8 Ir. L. T. Rep. 29.

subject to fines at the rate of threepence per share for the first month, and for each and every succeeding month threepence per share additional on such repayments; and that fines in arrear should be subject to fines in the same ratio as repayments in arrear. It was contended that this empowered the society to charge a fine of threepence per share for the first month, sixpence per share for the second month, ninepence per share for the third month, and so on, in arithmetical progression, month after month; but the Court rejected this construction, and held that they could only charge threepence per share for each month, however many months there might be.

"Reasonable fines."

A liberal construction has, however, been placed on the word "reasonable." Thus, a rule imposing fines at the rate of a shilling per pound per month (sixty per cent. per annum), for non-payment of their contributions by advanced members was held to be reasonable (*r*).

Where the rules provided that the fines incurred by all present or future mortgagors by neglecting to make their monthly payments of principal, interest, fines, and other payments, should be at the rate of five per cent. per month on the total amount in arrear, it was held that the monthly fine was to be calculated at the rate of five per cent. per month on the amount of the previous fines and other payments, as well as of the principal and interest in arrear, and that the amount of the fine was not unreasonable (*s*).

Interest on fines.

In taking the accounts in a foreclosure or redemption action, fines may be treated as principal, and interest charged on them accordingly, if there is an express agreement to that effect (*t*). In the absence of agree-

(*r*) *Parker* v. *Butcher*, 3 Eq. 762; 36 L. J. Ch. 552; *Pilkington* v. *Baker* (2), W. N. (1877) 210.

(*s*) *Re The Middlesbrough Building Society*, 54 L. J. Ch. 592; 51 L. T. 743; 1 Times L. R. 46; 49 J. P. 278; W. N. (1884) 208; and see also *Ex parte Voisey*, 21 Ch. D. 442; 52 L. J. Ch. 121; 31 W. R. 19; 47 L. T. 362.

(*t*) *Provident Permanent Building Society* v. *Greenhill*, 9 Ch. D. 122; 27 W. R. 110; 38 L. T. 140; and see also *Clarkson* v. *Henderson*, 14 Ch. D. 348.

ment, however, it would seem that fines do not carry interest (*u*).

In *Card* v. *Carr* (*x*), one of the rules provided that any unadvanced member who should have neglected to pay his monthly subscriptions for six consecutive monthly nights, should thereupon cease to be a member of the society, and forfeit all his interest therein. The Court were clearly of opinion that there was nothing unreasonable or contrary to law in such a rule, and that the directors were justified in forfeiting the shares of the plaintiff, who was seven months in arrear with his subscriptions. But a member cannot rely on his own default in payment of his subscriptions as an answer to a claim brought against him in respect of them; see *Moore* v. *Rawlins* (*y*), where it was held, under a similar rule, that the neglect of a member to pay his subscriptions and fines only operated as a forfeiture of his shares at the option of the directors. Forfeiture.

No member may receive from the funds of the society any interest or dividend by way of annual or other periodical profit upon any shares in the society until the amount or value of his share shall have been realized, except on the withdrawal of the member according to the rules then in force (*z*). No dividend payable until share realized or withdrawn.

The payment or division by the trustees, after the death of a member intestate, of any sum of money to or amongst any person or persons who, at the time of such payment, appear to the trustees to be entitled to the effects of the intestate, is valid and effectual as against any other persons claiming as next of kin or lawful representatives of the deceased, so far as the funds of the society and the trustees are concerned, though the remedy of the next of kin or Payment by trustees on death is valid.

(*u*) *Parker* v. *Butcher*, 3 Eq. 762; 36 L. J. Ch. 552; *Ingoldby* v. *Riley*, 28 L. T. 55, both decided by Lord Romilly, M. R.

(*x*) 1 C. B. N. S. 197; 26 L. J. C. P. 113.

(*y*) 6 C. B. N. S. 289; 28 L. J. C. P. 247.

(*z*) 6 & 7 Will. 4, c. 32, s. 1.

representatives against the person or persons who have received the money remains (*a*).

Payment of sums not exceeding 20*l*.

Where a member dies entitled to a sum not exceeding 20*l*., the trustees, if satisfied that no will was made and left by the deceased member, and that no letters of administration or confirmation will be taken out, may pay the same at any time after the death according to the rules of the society, and in the event of there being no such rules, then may pay and divide the same to and amongst the persons entitled to the effects of the intestate, without letters of administration in England or Ireland, and without confirmation in Scotland (*b*).

Annual statement of account.

Every member of an unincorporated society is entitled to receive from the society a copy of its annual statement of account on payment of such sum as the rules of the society may require, not exceeding the sum of sixpence (*c*).

(*a*) 10 Geo. 4, c. 56, s. 23.
(*b*) *Ibid.* s. 24.
(*c*) *Ibid.* s. 33.

CHAPTER VIII.

MORTGAGES TO BUILDING SOCIETIES.

Nature of advances by a building society.

The principal business of every building society, whether terminating or permanent, is to make advances to its members out of the funds of the society on the security of real or leasehold estate. The form of the mortgage given to secure such an advance depends mainly on the constitution of the society. In the case of a terminating society the object is to secure, not the repayment of the money advanced with interest, but the due payment by the member of his subscriptions and other contributions to the funds of the society until the full amount of the shares of the unadvanced or investing members is realized according to the rules; and as the advanced member receives by anticipation what the investing members will only receive on the termination of the society, he pays from the time he receives his advance an increased or additional subscription, which is called "redemption money," but is in reality interest. The mortgage must therefore be framed in such a way as to secure the due payment by the advanced member of all his contributions until the termination of the society. In permanent societies, on the other hand, a mortgage for an advance to a member is usually in the nature of a security for repayment of the advance by equal instalments, composed of principal and interest combined, and spread over a fixed period (*a*). If the society is incorporated the mortgage is made to the society itself; if it is unincorporated the security must be taken in the

(*a*) See Davidson's Precedents, Vol. II., Pt. 2, p. 704, 4th ed.

names of trustees, and it will vest in the trustees of the society for the time being without any conveyance or transfer (*b*).

Security must consist of real or leasehold estate.

The security for an advance must always consist of real or leasehold estate, whether the society is incorporated or not; an advance on the security of the member's shares in the society is illegal, and directors who make such an advance will be liable for any loss that may be sustained by the society in consequence (*c*); and though an advance may, without impropriety, be collaterally secured by the personal covenant of the member, or by a charge on property of an unauthorized description, *e. g.*, pure personal estate, the validity of the transaction must be estimated as if no such ingredient entered into it (*d*).

Ordinary law of mortgage applies.

Speaking generally and subject to such variations as necessarily result from the special nature of these securities, the ordinary law of mortgage applies in the case of a mortgage to a building society by one of its members (*e*); there is not one law for building society mortgagees and another for the rest of the Queen's subjects mortgagees (*f*). At the same time the position of an advanced member of a building society is not quite the same as that of an ordinary mortgagor, and his rights are affected to some extent, at least, by the contract of membership as well as by the contract of mortgage (*g*); and there are, moreover, certain statutory provisions, such, for instance, as the right to reconvey by endorsed receipt, which, of course, have no application to the case of an ordinary mortgage.

(*b*) 10 Geo. 4, c. 56, s. 21.

(*c*) *Cullerne* v. *London and Suburban General Permanent Building Society*, 25 Q. B. D. 485; 59 L. J. Q. B. 525; 39 W. R. 88; 63 L. T. 511; 6 T. L. R. 214, 449; 55 J. P. 148.

(*d*) *Sheffield and South Yorkshire Permanent Building Society* v. *Aizlewood*, 44 Ch. D. 412; 59 L. J. Ch. 34; 62 L. T. 678; 6 Times L. R. 25.

(*e*) *Provident Permanent Building Society* v. *Greenhill*, 9 Ch. D. 122; 27 W. R. 110; 38 L. T. 140; *Bell* v. *London and South Western Bank*, W. N. (1874) 10.

(*f*) *Per* Bacon, V.-C., 9 Ch. D. p. 124.

(*g*) *Per* Fry, L. J., *Rosenberg* v. *Northumberland Building Society*, 22 Q. B. D. p. 380; 37 W. R. 368; 60 L. T. 558; 5 Times L. R. 265.

Right of member to redeem.

An advanced member of a building society, it is well settled, has the right to redeem his security, the terms of redemption depending on the rules of the society and the provisions of the mortgage deed; but questions of great difficulty have sometimes arisen on this point, owing to the want of care shown in framing the rules.

In the case of a permanent society it is comparatively easy to ascertain how much must be paid by an advanced member who wishes to redeem his security; but in the case of a terminating society, owing to the impossibility of saying exactly how long the society will last, the calculation is one of some difficulty, and in fact can scarcely be made with perfect theoretical accuracy.

In terminating societies.

The following cases have been decided as to the terms of redemption in terminating societies:—

Seagrave v. *Pope*.

In *Seagrave* v. *Pope* (*h*), the mortgagor claimed to be entitled to redeem on payment of the sums advanced to him by the society less the amount of the subscriptions which he had paid and the proportion of profits in the society to which he was entitled; it was held, however, by the Lord Chancellor, reversing the decision below, that he could only redeem on payment of all sums which, according to the rules, were then due or might thereafter become due during the *probable duration* of the society; and see *Mosley* v. *Baker* (*i*).

Fleming v. *Self*.

In *Fleming* v. *Self* (*k*), the decree directed calculation of the *longest possible* duration of the society at the date of the notice to redeem, having regard to the net assets of the society and to the monthly subscriptions and redemption money still continuing payable, and to the number of

(*h*) 1 De G. M. & G. 783; 22 L. J. Ch. 258; 16 Jur. 1099; 19 L. T. (O. S.) 173; 20 L. T. (O. S.) 158.

(*i*) 1 H. & T. 301; 3 De G. M. & G. 1032, n.; 18 L. J. Ch. 457; 13 L. T. (O. S.) 317; affirming *S. C.* below, 6 Ha. 87; 17 L. J. Ch. 257; 12 Jur. 551; 10 L. T. (O. S.) 461; Seton, Vol. II., p. 1174, 4th ed., where the form of decree is given.

(*k*) 3 De G. M. & G. 997; 24 L. J. Ch. 29; 1 Jur. N. S. 25; 3 W. R. 89; 24 L. T. (O. S.) 101; 18 J. P. 772; 3 Eq. Rep. 14.

shares to be provided for, and charged the plaintiff as a present debt with all subscriptions and redemption money which would become payable by him, assuming the society to last for the whole af the calculated period, and crediting him with the amount of bonus payable at the date of the notice to withdrawing members. This decision was followed in *Smith* v. *Pilkington* (*l*), where it was further held that the mortgagor was also entitled to deduct redemption money paid by him, the Court being of opinion that this point had in fact been determined by the Lord Chancellor in *Fleming* v. *Self*, though not expressly referred to in his Lordship's judgment in that case. See also *Archer* v. *Harrison* (*m*), where the trustees, forgetting that advanced members on redeeming would be entitled to participate, allowed a bonus on too liberal a scale, and the Court declined to relieve the society from the consequences of the mistake.

Smith v. *Pilkington.*

Archer v. *Harrison.*

In *Sparrow* v. *Farmer* (*n*), the estimated duration of the society, as shown by a table annexed to the rules, was thirteen years. The manager embezzled the moneys of the society and absconded, whereupon it became evident that the requisite amount (120*l.*) per share would certainly not be realized at the end of thirteen years. One of the rules empowered advanced members to redeem on payment of their subscriptions "up to the end of the thirteenth year of this company"; and the Court held that on payment of this amount an advanced member must be allowed to redeem, although he would remain liable under the rules to pay subscriptions until 120*l.* a share had been realized for the investing members; and see *Farmer* v. *Smith* (*o*), and *Handley* v. *Farmer* (*p*).

Sparrow v. *Farmer.*

(*l*) 1 De G. F. & J. 120; 29 L. J. Ch. 227; 24 J. P. 227; *S. C.* below, 4 Jur. N. S. 58.

(*m*) 7 De G. M. & G. 404; 3 Jur. N. S. 191; 29 L. T. (O. S.) 71; 21 J. P. 515.

(*n*) 26 Beav. 511; 28 L. J. Ch. 537; 5 Jur. N. S. 530; 33 L. T. (O. S.) 216; 23 J. P. 500.

(*o*) 4 H. & N. 196; 28 L. J. Ex. 226; 5 Jur. N. S. 533, n.; 7 W. R. 362; 32 L. T. (O. S.) 371; 23 J. P. 230.

(*p*) 29 Beav. 362.

Permanent societies, whether entitled to future interest.

A question sometimes arises, particularly in the case of permanent societies, whether the society on a redemption or sale is entitled to the full amount of the future instalments, including such part as consists of premiums (if any) and interest, or whether so much as consists of premium or future interest ought not to be deducted, or at least, some rebate or discount allowed for present payment. The answer depends mainly on the rules of the society and the terms of the mortgage; the decisions on the point are somewhat conflicting.

Future interest allowed. *Matterson* v. *Elderfield.*

In *Matterson* v. *Elderfield* (*q*), the mortgage contained a power of sale in the event of the subscriptions, which were composed partly of principal and partly of interest, falling into arrear, and the purchase-money was to be applied in satisfaction of all moneys then due or thereafter to become due from the mortgagor in respect of subscriptions, fines, insurance, or otherwise under the mortgage deed, and the surplus was to be paid to the mortgagor. The subscriptions fell into arrear, and the directors sold the property. Lord Hatherley, L. C., held, reversing the decision of Giffard, V.-C., that the mortgagor was not entitled to any rebate or discount upon the amount of subscriptions not due at the time of the sale, although the rules directed that such an allowance should be made in the case of a mortgagor *redeeming* his mortgage before the expiration of the full period of payment, and he was of opinion that there was no substantial difference in a question of this kind between a permanent and a terminating society.

Re O'Donohoe's Estate.

In *Re O'Donohoe's Estate* (*r*), a member in May, 1873, obtained as "advanced shares" a loan of 3,000*l.*, repayable "by way of annuity," in thirteen years by 156 monthly subscriptions or instalments of 30*l.* each, together with certain fines in default of punctual payment. The rules provided that a member might redeem by paying all sub-

(*q*) 4 Ch. 207; 17 W. R. 422; 20 L. T. 503; 33 J. P. 326.

(*r*) Ir. R. 10 Eq. 221.

scriptions, fines, and other moneys which might be then in arrear, as well as the present value of all future payments to be computed at the rate of 5 per cent. on all annuities having not more than five years unexpired of the original term, and at the rate of 6 per cent. when there should be more than ten and not more than fifteen years unexpired. The mortgage provided that if the borrower should be two months in arrear, the trustees of the society might sell the mortgaged premises, and after paying all expenses, should retain in trust for the society all repayments, fines, and other payments and sums then due to the society in respect of the shares, and the then present value of the future repayments to be made in respect of the shares to the society, calculated to the end of the term for which the shares had been advanced, and which future repayments should be discounted after the rate of 5 per cent. per annum interest on such repayments upon the principle of repayments made at the end of each year. The mortgaged premises were subsequently sold in the Landed Estates Court on the petition of a *puisne* incumbrancer, the mortgagor being over two months in arrear at the date of the filing of the petition, and in July, 1875, on the settlement of the final schedule, the society claimed, besides twenty-three months' instalments, which were then in arrear, and the fines upon them, "the present value of future payments at 6 per cent. discount as per rule." The Court of Appeal in Ireland held, discharging the order of the Court below, that the society was entitled, in addition to arrears and fines, to the value, at the date of payment, of the future repayments in respect of the mortgage, calculated from such date to the end of the term for which the mortgage was originally taken, subject to a rebate or discount at the rate of 5 per cent. per annum.

Future

On the other hand, *Ex parte Osborne*, *In re Goldsmith* (*s*),

(*s*) 10 Ch. App. 41; 31 L. T. 366.

seems a clear authority that future interest ought not to be allowed. In that case the mortgage contained a power of sale in case of default in payment of subscriptions, and it was declared that the trustees should retain out of the purchase-money all such subscriptions, fines, and other sums of money and payments which should be then due, or which should afterwards become due in respect of the said shares during the remainder of the said period of seven years, it being agreed that in case of any such sale all the moneys which would at any time afterwards become due from the mortgagor in respect of the said shares, according to the rules of the association, should be considered as then immediately due and payable; and the rules provided that a borrowing member might at any period redeem his property on equitable terms. The mortgagor, after paying a few subscriptions, became bankrupt, and the trustees of the society sold the property under the power of sale. A very strong Court (Lord Cairns, L. C., James and Mellish, L. JJ.), held that the society were entitled to retain out of the proceeds of sale all subscriptions and fines payable up to the time of the completion of the sale, and such further sum as represented the balance of the principal sum remaining at that time unpaid, but that they were not entitled to any payment in respect of interest accruing after the principal had been all repaid. In the course of his judgment Lord Cairns said:—"Interest implies forbearance, and therefore when the whole is paid there can be no interest. That seems the natural result of the transaction, and the trust of the sale moneys in the mortgage deed is consistent with that view. It is there provided that the trustees, after payment of the expenses of the sale, shall 'retain all such subscriptions, fines, and other sums of money and payments which shall be then due or which would afterwards become due in respect of the said shares during the then remainder of the said period of seven years, it being agreed by the said parties

interest not allowed. *Ex parte Osborne.*

hereto that in case any such sale shall take place, all the moneys which would at any time afterwards become due from the said G. Goldsmith, his executors, administrators, or assigns, in respect of the said shares, according to the rules of the said association, shall be considered as being immediately due and payable.' With regard to the future, you cannot include under 'moneys which would at any time afterwards become due' any fines; no more can you include payments in respect of interest, for interest can only arise in respect of a principal sum remaining outstanding and forborne. Therefore my conclusion is, that everything due in respect of monthly instalments and fines at the time of the sale must be retained; and then it must be ascertained how much of the monthly payments represented principal, and how much interest, and it will then appear how much of the principal remained unpaid. That must also be retained, and that will conclude the transaction."

Premium. *Harvey* v. *Municipal Society.*

In *Harvey* v. *Municipal Permanent Investment Building Society* (*t*), it was held by Pollock, B., on the construction of the rules and the mortgage deed, that a premium of 2*s.* per share per annum, payable by advanced members, must be added to the capital sum advanced, and interest charged on the combined amount, and that the borrower was not entitled on redeeming to any rebate in respect of the premiums contracted to be paid.

Provision for immediate payment of future instalments in default.

A provision making all future instalments immediately payable in case default is made in regular payment will amount to a personal covenant to that effect on the part of the borrower; see *Sherriff* v. *Glenton* (*u*). In that case the mortgage contained a provision that on non-payment of three successive instalments the mortgaged premises might

(*t*) 26 Ch. D. 273; 52 L. J. Ch. 349.

(*u*) 28 L. T. 65. A provision making the balance of instalments payable on default in payment of one instalment is not a penalty, and there is no objection to it in point of law: *Protector Endowment Loan and Annuity Co.* v. *Grice*, 5 Q. B. D. 592; 49 L. J. Q. B. 812; 43 L. T. 564, reversing the decision below; 5 Q. B. D. 121; 49 L. J. Q. B. 247; 42 L. T. 183.

be sold, and on any sale all the future instalments "should be held immediately payable and be retainable accordingly from the proceeds of sale," subject to such discount as the directors might think fit to allow; and the deed also contained a covenant by the member to pay the instalments. The payments having fallen into arrear, the directors exercised their power of sale, and then brought an action against the member to recover the difference between the proceeds of sale, which were insufficient to satisfy their claim, and the unpaid instalments. The Court of Queen's Bench were clear that the above words implied a personal covenant by the member that upon non-payment of three instalments he would at once pay the whole sum remaining due, subject only to such discount as the directors might think proper to allow.

When the mortgagor is bankrupt.

If the mortgagor becomes bankrupt and the society are compelled to prove in the bankruptcy, other considerations arise. Under these circumstances the rule has always been that there can be no proof for interest accruing due after the date of the adjudication, the theory in bankruptcy being to stop all things at the date of the bankruptcy, and to divide the wreck of the man's property as it stood at that time (*x*).

Ex parte Bath.

This rule was applied in the well-known case of *Ex parte Bath*. There a member of a building society borrowed 1,200*l*., for which he was to pay 144*l*. premium and interest at 5 per cent. per annum. The principal, premium, and interest were made payable in a fixed number of monthly instalments, each of which consisted of principal, premium, and interest. The mortgagor filed a liquidation petition, and the society claimed to prove in the liquidation for the total amount of the monthly instalments which remained due under the deed, less the amount at which they valued their security. The Court of Appeal held—

(*x*) *Per* James, L. J., *Re Savin*, 7 Ch. p. 764; 20 W. R. 1027.

(1) That no proof could be made in respect of so much of the sum claimed as represented interest payable subsequently to the filing of the petition (*y*); but (2) That the premium was not in the nature of interest, and that the society were entitled to prove for it in the liquidation (*z*). In the course of his judgment, Lindley, L. J., said:—"On looking at the mortgage deed and considering the mode of working these societies, I am quite satisfied that this premium has nothing whatever to do with interest. It is a sum which is not altogether arbitrary, because it is calculated with reference to the duration of the loan. The object is to fix a sum which it will be worth the borrower's while to pay for the accommodation granted him by the society, that accommodation being the payment of the principal and interest by instalments. It is not a cloak for getting compound interest, or anything of that kind; it is a charge made for the convenience granted to the borrower. There is nothing illegal in it, nothing uncommon, nothing oppressive, and it appears to me that it would be an entire mistake to call it interest in any sense or shape. If you look at the deed it is quite plain it is not treated as interest, because the deed draws a distinction between the actual sum advanced, the 1,200*l.*, the premium, and the interest. The advance and the premium are first capitalized, and interest is charged on the aggregate sum; and then there is the clause which provides for the application of the instalments. But we must look at the substance of the thing, and I am satisfied that the premium is not in the nature of interest."

Present rule in bankruptcy.

It has recently been decided, however, that under the Bankruptcy Act, 1883 (*a*), the rule as to future interest is somewhat different, and that the effect of that Act and rule 21 in the second schedule thereto is that where a debt

(*y*) *Ex parte Bath, Re Phillips*, 22 Ch. D. 450; 31 W. R. 281; 48 L. T. 293.

(*z*) *Ex parte Bath, Re Phillips*, 27 Ch. D. 509; 32 W. R. 808.

(*a*) 46 & 47 Vict. c. 52.

is by contract payable at a future date with interest in the meantime, and the debtor becomes bankrupt before the time of payment has arrived, the creditor may prove for interest after the date of the receiving order. In such a case, the proper course is first to prove the principal sum as a present debt, deducting a rebate of interest at 5 per cent. from the dividends upon it under rule 21; and then to value the liability to pay interest, and prove for that value, the dividend on which will be paid without any rebate. If the rate of interest contracted for is 5 per cent. then, as under the rule interest is to be calculated at 5 per cent. for the purposes of rebate, the proper course is simply to prove for the principal sum as a present debt without any rebate (*b*).

Payment to administrator on death of advanced member leaving an infant heir.

If an advanced member of an incorporated society die intestate leaving an infant heir, the society, after selling the mortgaged premises, may pay to the administrator of the deceased member any money to the amount of 150*l.* which remains in their hands after paying the amount due to the society and the costs of the sale, and such sum of 150*l.* will be considered as personal estate and be liable to duty accordingly (*c*). In ordinary cases, surplus sale moneys for which the society cannot obtain a discharge should either be paid into Court under the Trustee Relief Act or else set apart and invested, and if this is not done the society will be liable to be charged with interest at 4 per cent. from the time of the completion of the sale (*d*). Except as to the balance of the purchase money, however, the society in exercising a power of sale in a mortgage is not a trustee for the mortgagor, even if the mortgage is in the form of a trust for sale (*e*).

(*b*) *Re Browne and Wingrove, Ex parte Ador*, [1891] 2 Q. B. 574; 61 L. J. Q. B. 15; 40 W. R. 71; 65 L. T. 485; 7 Times L. R. 747.

(*c*) Building Societies Act, 1874, s. 30.

(*d*) *Charles* v. *Jones*, 35 Ch. D. 544; 56 L. J. Ch. 745; 35 W. R. 645; 56 L. T. 848.

(*e*) *Warner* v. *Jacob*, 20 Ch. D. 220; 51 L. J. Ch. 642; 30 W. R. 731; 46 L. T. 656.

Society may transfer the security.

A building society, it has been decided, has the ordinary right of a mortgagee to transfer the security (*f*), though it is evident that difficulties may often arise in the exercise by a private transferee of the rights and powers vested in the society under the mortgage.

Advanced member how far bound by alteration of rules.

On principle, it would seem that an advanced member must be bound by any alteration of the rules that may be made subsequently to the date of his advance, even though the result may be to increase the burden upon him; for his rights must, necessarily, be affected more or less by the contract of membership as well as by the contract of mortgage, and the contract of membership carries *in gremio* the right on the part of the society to alter the rules from time to time (*g*). But no case has yet gone the length of holding an advanced member bound by any such alteration unless the provisions of the mortgage deed have expressly referred to the rights of the member and the society as being regulated by the *rules for the time being*.

Smith's Case.

Thus, in *Smith's Case* (*h*), where an advanced member had covenanted to pay to the society "at the times and in manner prescribed by its rules for the time being applicable thereto respectively, the several sums of money payable periodically by way of subscription or otherwise" in respect of his shares, and that in the meantime (except where varied by those presents) all the rules "for the time being" of the society should in respect of the said shares be observed by him, and the society seven years afterwards adopted new rules, one of which provided that advanced members should before redeeming their securities pay an additional sum as a contribution towards certain losses sustained by the society, and another of which provided that so far as the

(*f*) *Ulster Building Society* v. *Glenton*, 21 L. R. Ir. 124.

(*g*) *Per* Fry, L. J., *Rosenberg* v. *Northumberland Building Society*, 22 Q. B. D. p. 380; 37 W. R. 368; 60 L. T. 558; 5 Times L. R. 265; and see the judgment of Cotton, L. J., in *Wilson* v. *Miles Platting Society*, 22 Q. B. D. p. 382.

(*h*) 1 Ch. D. 481; 45 L. J. Ch. 143; 24 W. R. 103.

rules of law and equity would permit the rules then passed should apply to all the members as well present as future and to all its transactions as well past as future, Hall, V.-C., was clearly of opinion that members who received their advances before the date of the new rules were not bound by them, and were entitled to redeem on payment only of those sums which they were liable to pay according to the rules in existence at the date of the advance.

Wilson v. *Miles Platting Society.*

On the other hand, in *Wilson* v. *Miles Platting Building Society* (*i*), and *Rosenberg* v. *Northumberland Building Society* (*k*), a different result was arrived at. In the former case, by the rules as they stood at the date of the mortgage, advanced members were not bound to contribute to losses, but the mortgage contained a covenant by the borrower to pay to the society "all subscriptions and contributions, interest, fines, premiums of insurance, and other moneys, and to do and perform all acts and things, which, according to the rules for the time being of the society and the provisions herein contained, shall from time to time become due and payable, and which ought to be done and performed by the mortgagor;" and the proviso for redemption was expressed in similar terms. By an alteration of rule made subsequently to the mortgage, the directors were empowered to charge a member paying off any shares in respect of which an advance had been made with such a sum in respect of such shares as would, *pro ratâ* with the other subscriptions and paid-up shares in the society, in the opinion of the board be sufficient to cover any loss or anticipated loss of the society. The Court of Appeal held that the mortgage was subject to the altered rule, and that the borrower could only redeem on that footing. Cotton, L. J., who gave judgment, distinguished *Smith's Case* on the grounds that the covenant there only contemplated that the time and manner of payment might

(*i*) 22 Q. B. D. 381 n. 368; 60 L. T. 558; 5 Times L. R. 265.
(*k*) 22 Q. B. D. 373; 37 W. R.

be varied, and that the alteration was only to take effect "so far as the rules of law and equity would permit." As the covenant and the rule were framed in that case, the learned Lord Justice thought the decision of Hall, V.-C., was right, but, he added, if the Vice-Chancellor had meant to say that in the case of a security containing a covenant by the mortgagor to pay everything which the rules of the society for the time being might require to be paid, new rules made after the date of the security would not apply, he should differ from his view and could not follow it.

Rosenberg v. *Northumberland Building Society.*

In *Rosenberg* v. *Northumberland Building Society*, the Court of Appeal held that they were bound by the *Miles Platting Case*, which was practically undistinguishable, and they followed it accordingly.

Advanced members not liable for losses.

In the absence of special contract, however, an advanced member is not liable, even in a winding-up, to bear a share of losses sustained by the society; see *infra*, Chap. X., p. 223, and the authorities there cited. There is no substantial difference in this respect between incorporated and unincorporated societies.

Mortgage to secure subscriptions "and other moneys."

In a mortgage to secure the repayment of principal money by certain instalments with interest, and subscriptions, "and other moneys," these last words must be construed to mean moneys *ejusdem generis* with those previously mentioned, and will not include moneys of the society which the member who was also the secretary had received in the latter character, and subsequently misapplied (*l*).

Consolidation.

Where the mortgagor had covenanted to observe all the rules of the society, and one of such rules provided that if the society held more than one mortgage from any member he should not have power to redeem one property alone without the consent of the board, it was held that the effect of the covenant was the same as if the words of the rule were repeated in the mortgage, and that the

(*l*) *Bailes* v. *Sunderland Equitable Industrial Society, Limited*, 55 L. T. 808; 3 Times L. R. 97; 51 J. P. 310; W. N. (1886) 191.

society had a right to consolidate as against a subsequent incumbrancer with notice of the covenant, though in the absence of such notice there would, under the circumstances, have been no right of consolidation (*m*).

Where subscriptions continued after advance.

A member who obtains an advance from a permanent society does not usually continue to pay subscriptions in addition to making his repayments under the mortgage, but the rules may contain a provision to that effect, and if they do, the society will, it seems, have a claim on any subscriptions so paid as security for the advance. This was the ground of the decision in *Moxon* v. *Berkeley Mutual Benefit Building Society* (*n*), though the question actually determined was as to a right of marshalling. In that case a member obtained an appropriation of 500*l.* in respect of certain shares and gave a mortgage to secure the advance in the usual way. The rules gave him an option to continue his subscriptions while repaying his appropriation, and also provided that he should be entitled to have his subscriptions placed to his credit in respect of his repayments under the mortgage; but he made no request to this effect, and it was not done, nor did the rules in terms give the society any corresponding right. For some time he continued to pay both his subscriptions and repayments, but ultimately ceased to pay either, and went into liquidation. The society then sold the mortgaged property under their powers of sale for 1,200*l.* which satisfied the amount due under the mortgage and left a balance of 500*l.*; and they had also in their hands a sum of 336*l.*, being the amount of the subscriptions paid in by the member after the date of his appropriation. The question as to how this sum should be dealt with arose between a mortgagee of the equity of redemption and the purchaser under the liquidation of all the debtor's property except that comprised in the mortgage. Mr. Justice Kay held that, either by

(*m*) *Andrews* v. *City Permanent Building Society*, 44 L. T. 641.

(*n*) 59 L. J. Ch. 524; 62 L. T. 250.

contract or by the operation of the law of set-off, the society had a right not only against the mortgaged property, but also against the 336*l.*, and that neither the mortgagor nor anyone claiming under him could insist on having that fund paid over till the mortgage debt was satisfied. The society, said the learned judge, had an estate and a fund to which they might resort for payment of the debt due to them from the member. The member afterwards assigned the estate to one person and the fund to another; that brought the case within the ordinary rule as to marshalling, and the equity between the two assigns was to have the debt paid rateably out of the two funds.

Foreclosure.

A building society may obtain a judgment for foreclosure against an advanced member, and the form of decree does not differ materially from that in the case of an ordinary mortgage (*o*). In a recent case the judgment directed an account of what was due to the plaintiffs under or by virtue of their security, regard being had to the redemption tables of the society, and for the costs of the action, and in default of payment, foreclosure (*p*).

Decree for sale.

Where, however, the mortgage is in the form of a trust for sale to secure the moneys due to the society, a decree for sale, and not foreclosure, is the proper remedy (*q*). "I see no difference," said Wood, V.-C., "between the case of an ordinary mortgage and that of a trust for sale. It is not such a trust as would enable the mortgagor to file a bill to have the property sold, because the discretion as to selling or not is in the mortgagee alone. On the other hand, the mortgagee cannot file a bill to foreclose, but is limited to his remedy by sale. But these distinctions

(*o*) *Provident Permanent Building Society* v. *Greenhill*, 9 Ch. D. 122; 27 W. R. 110; 38 L. T. 140; *Ingoldby* v. *Riley*, 28 L. T. 55; W. N. (1873), 38; *Bell* v. *London and South Western Bank*, W. N. (1874), 10; Building Societies Act, 1874, s. 13.

(*p*) *Boney* v. *Charter*, W. N. (1887), 52.

(*q*) *Schweitzer* v. *Mayhew*, 31 Beav. 37; and see *Jenkin* v. *Row*, 5 De G. & S. 107; 16 Jur. 1131.

make no substantial difference in his position, which is that of a mortgagee" (*r*).

Security by registered charge under the Land Transfer Act, 1875.

If the society is the registered proprietor of a registered charge under the Land Transfer Act, 1875, it may enforce a foreclosure or sale of the land charged in the same manner and under the same circumstances in and under which it might enforce the same if the land had been transferred to the society by way of mortgage, subject to a proviso for redemption on payment of the money at the appointed time (*s*); and, if the registered proprietor of a registered charge with a power of sale, it may at any time after the expiration of the appointed time, sell and transfer the land charged or any part thereof, in the same manner as if it were the registered proprietor of the land (*t*). By the Land Registry Rules of 1889, it is provided that every charge in favour of a building society shall, subject to the approval of the Registrar and to the provisions contained in the Land Transfer Act, 1875, with respect to registered dispositions for valuable consideration, be subject to such provisions as may be referred to therein and filed in the office; and a general form of such provisions may be filed by any such society from time to time.

Land Registry Rules, 1889.

Copyholds.

As to the appointment of trustees for the purpose of being admitted to copyholds of which the society is equitable mortgagee, see *ante*, p. 48.

Costs of action for redemption or foreclosure.

A building society is entitled, like any other mortgagee, to its costs of an action for redemption or foreclosure, unless its conduct has been vexatious and oppressive. Such costs are not in the ordinary discretion of the Court, like the costs of litigation generally. The society, being a mortgagee, has an absolute *right* to costs, which will not be interfered with except for actual misconduct; see

(*r*) *Kirkwood* v. *Thompson*, 2 H. & M. 392, 402; and see *Locking* v. *Parker*, 8 Ch. App. 30; 42 L. J. Ch. 257; 21 W. R. 113; 27 L. T. 635; *Re Alison, Johnson* v. *Mounsey*, 11 Ch. D. 284; 27 W. R. 389, 537; 40 L. T. 234.

(*s*) Land Transfer Act, 1875, 38 & 39 Vict. c. 87, s. 26.

(*t*) *Ibid.* s. 27.

Cotterell v. *Stratton* (*u*). In that case the directors of a building society, in answer to one of their advanced members, stated that 736*l.* was due on the mortgage, the society having been for some years in possession. Soon afterwards they informed the member that they intended to sell the property under the power of sale, upon which he filed a bill to restrain the sale and for redemption. The directors then said they had no intention of pressing a sale, and by consent a decree was taken for the usual accounts. On the accounts the mortgagor attempted, but unsuccessfully, to surcharge the society to the amount of 1,227*l.*, principally for fines and commission; the society were, however, charged with certain occupation rents, and were disallowed charges for repairs, so that the amount due at the filing of the bill was found to be 517*l.* instead of 736*l.* The Court of Appeal held, reversing the decision of Malins, V.-C., that there was nothing in the conduct of the society which would deprive them of the right to add their costs of the suit to their security; and further, that in such a case an appeal as to costs might be maintained, and that the costs of the appeal might be included in the costs of the suit. In the course of his judgment the Lord Chancellor (Lord Selborne) said:—"The right of a mortgagee in a suit for redemption or foreclosure to his general costs of suit, unless he has forfeited them by some improper defence or other misconduct, is well established, and does not rest upon the exercise of that discretion of the Court which, in litigious causes, is generally not subject to review. The contract between mortgagor and mortgagee, as it is understood in this Court, makes the mortgage a security, not only for principal and interest, and such ordinary charges and expenses as are usually provided for by the instrument creating the security, but also for the

(*u*) 8 Ch. 295; 42 L. J. Ch. 417; 21 W. R. 234; 28 L. T. 218; 37 J. P. 4.

costs properly incident to a suit for foreclosure or redemption. In like manner, the contract between the author of a trust and his trustees entitles the trustees, as between themselves and their *cestuis que trust*, to receive out of the trust estate their proper costs incident to the execution of the trust. These rights, resting substantially upon contract, can only be lost or curtailed by such inequitable conduct on the part of a mortgagee or trustee as may amount to a violation or culpable neglect of his duty under the contract. Any departure from these principles in the general course of the administration of justice in this Court would tend to destroy, or at least very materially to shake and impair, the security of mortgage transactions and the safety of trustees. In fact, such a departure, instead of being beneficial to those who may have occasion to borrow money on security, or to repose confidence as to property in their friends or neighbours would, in the result, throw the former class of persons into the hands of those who indemnify themselves against extraordinary risks by extraordinary exactions, and would deprive the latter class of the assistance of all who cannot afford, or are not inclined, to bestow upon the affairs of other persons their money as well as their trouble and time." See further as to the costs of mortgagees, *Turner* v. *Hancock* (*x*), where the above language of Lord Selborne is quoted with approval by Jessel, M. R.; *Charles* v. *Jones* (*y*); *Kinnaird* v. *Trollope* (*z*); Morgan and Wurtzburg on Costs, pp. 221 *et seq.*; and R. S. C. 1883, Order 65, r. 1. And though a mortgagee who has been deprived of his costs may appeal, yet if, notwithstanding charges of misconduct, the judge has allowed the mortgagee his costs, the mortgagor cannot appeal; for the fact of the misconduct, if proved, would bring the costs within the discretion

(*x*) 20 Ch. D. 303; 51 L. J. Ch. 517; 30 W. R. 480; 46 L. T. 750.
(*y*) 33 Ch. D. 80; 56 L. J. Ch. 161; 35 W. R. 88; 55 L. T. 331.
(*z*) 42 Ch. D. 610; 58 L. J. Ch. 556; 60 L. T. 892; 5 Times L. R. 513.

of the judge, and consequently within the rule that there is no appeal for costs which are within the discretion of a judge (*a*).

Interest on fines.

In taking the accounts in a foreclosure or redemption action, fines will be treated as principal, and will carry interest accordingly, if there is an agreement to that effect; see the cases cited *ante*, p. 142.

Land acquired by foreclosure must be sold.

Any land to which an incorporated society may become absolutely entitled by foreclosure, or by surrender, or by other extinguishment of the right of redemption, must be sold or converted into money as soon afterwards as conveniently practicable (*b*). There is no such provision in the case of an unincorporated society.

Purchase by agent of society.

If the mortgaged property is sold by the society under a power of sale, no solicitor or other agent who acts for them in the matter of the sale can buy it; see *Martinson* v. *Clowes* (*c*), where a purchase by the secretary of the society was set aside, though he had bought at an auction, and there was no proof of undervalue.

Executor.

An executor may execute a mortgage to a building society (*d*).

Settlement of disputes.

A dispute between the society and a member who has executed a mortgage to secure an advance is not a matter to be settled by arbitration; it must be decided by the Courts in the ordinary way, whether the society is incorporated or unincorporated: see *post*, pp. 180, 193.

Stamp duty on mortgages.

Mortgages to an incorporated building society are liable to stamp duty in the ordinary way (*e*); if the society is unincorporated, any mortgage to the society by a *member* for a sum *not exceeding five hundred pounds* is exempt from duty (*f*).

(*a*) *Charles* v. *Jones*, *ubi sup.*

(*b*) Building Societies Act, 1874, s. 13.

(*c*) 21 Ch. D. 857; 51 L. J. Ch. 594; 30 W. R. 795; 46 L. T. 882; W. N. (1885), 41.

(*d*) *Cruikshank* v. *Duffin*, 13 Eq. 555; 41 L. J. Ch. 317; 20 W. R. 354; 26 L. T. 121; 36 J. P. 708, cited *ante*, p. 123.

(*e*) Building Societies Act, 1874, s. 41.

(*f*) 10 Geo. 4, c. 56, s. 37; Stamp Act, 1891, s. 89; and see *ante*, p. 70.

Duty, how ascertained.

A mortgage to secure the repayment of an advance by mixed instalments of principal and interest will be chargeable with duty on the amount of the advance (*g*); but if it be to secure future subscriptions, it appears that it is considered to be chargeable with duty on the whole amount secured; how the duty is to be assessed when the period during which the subscriptions are to continue is uncertain is not apparent (*h*).

Deduction for income tax.

A member of a building society, who has executed a mortgage to the society in the usual form to secure an advance, is entitled to deduct income tax on so much of each periodical instalment as is in fact payment of interest (*i*); but not on such portion as is repayment of principal, this not being income at all but capital (*k*). The right to deduct income tax from time to time as and when mortgage interest is paid is absolute, and a mortgagor so deducting income tax is acquitted and discharged by statute of so much money as the deduction shall amount to as if the amount had actually been paid to the person to whom the interest was due and payable, and if the society should refuse to allow the deduction it will become liable to a penalty of 50*l.* (*l*). The tax should, however, be deducted from each instalment before it is paid, and if this is not done the amount cannot afterwards be deducted from the future instalments (*m*).

Premium.

The premium commonly charged for an advance is not in the nature of interest, although made payable by instalments (*n*).

(*g*) Stamp Act, 1891, s. 87, subs. 2.

(*h*) See Dav. Prec. Vol. II. Part 2, p. 709, 4th ed.

(*i*) *Ex parte Wythes*, 53 L. T. 492; *Mosse* v. *Salt*, 32 Beav. 269; 32 L. J. Ch. 756; *Crane* v. *Kilpin*, 6 Eq. 334; 37 L. J. Ch. 913; 18 L. T. 350. A similar decision was given by his honour Judge Holl, Q. C., in the case of *Raffles* v. *The Gateshead Conservative Building Society*.

(*k*) *Foley* v. *Fletcher*, 3 H. & N. 769; 28 L. J. Ex. 100; 22 J. P. 819.

(*l*) 16 & 17 Vict. c. 34, s. 40.

(*m*) *Ex parte Wythes*, 53 L. T. 492.

(*n*) *Ex parte Bath, Re Phillips*, 27 Ch. D. 509; 32 W. R. 808, cited *ante*, p. 154.

Special arrangement with the Board of Inland Revenue as to income tax in the case of building societies.

The Board of Inland Revenue have made a special arrangement with certain building societies as to the payment of income tax by advanced members, and it is open to any society to apply to the Board to be included in the list of societies which have accepted the arrangement, provided the directors of the society are willing to accept in their entirety the conditions therein laid down. The terms of the arrangement are as follows:—

1. All interest to be exempted where the borrowing member is exempt by reason of his total income from all sources being below 150*l.*, the society undertaking to see that the borrowers make the usual claim to the surveyor of taxes for the district in which they reside, and otherwise afford facilities to the surveyor or surveyors for the requisite verification of the claims.

2. Where the borrowers are not so exempt, the properties on which the interest is secured by mortgage or otherwise to be retained in charge according to their respective annual values, and the society to allow the borrower to deduct the tax applicable to the interest.

3. All property in the society's hands as mortgagees in possession to be exempted.

4. The society to furnish a statement, to be verified by the board's surveyor of taxes once a year, of the interest paid or credited to depositors and members whose incomes amount to 150*l.* a year and upwards from whom the society would have the right to deduct the tax, whether the society exercised the right or not.

5. The society to furnish a list of the interest received from the borrowers to whom the society has allowed the tax, with all necessary particulars of the properties assessed, and vouchers in the shape of certificates of deduction of the tax on a prescribed form No. 185.

6. Where the total interest received (par. 5) on which the society has allowed the tax exceeds the total interest paid or credited (par. 4), and on which the society has the

right to retain the tax, the society to be repaid the duty on the difference, and where the converse is the case, that is, where the tax which ought to be retained by the society exceeds the tax allowed by the society, the society to render a return of the difference for assessment under Schedule D. of the Income Tax Acts.

Discharge of mortgages to a building society.

On payment of all moneys due under the security the advanced member will be entitled to a reconveyance of his property, discharged from all further claims. This is effected in the case of an incorporated society under the 42nd section of the Act of 1874, which provides as follows:—

Receipt endorsed on mortgage to be sufficient discharge without reconveyance.

"When all moneys intended to be secured by any mortgage or further charge given to a society under this Act in England or Ireland have been fully paid or discharged, the society may endorse upon or annex to such mortgage or further charge a reconveyance of the mortgaged property to the then owner of the equity of redemption, or to such persons and to such uses as he may direct, or a receipt under the seal of the society, countersigned by the secretary or manager, in the form specified in the schedule to this Act, and such receipt shall vacate the mortgage or further charge or debt, and vest the estate of and in the property therein comprised in the person for the time being entitled to the equity of redemption, without any reconveyance or resurrender whatever; and if the said mortgage or further charge has been registered under any Act for the registration or record of deeds or titles, the registrar under such Act, or his deputy or assistant registrar, or the recording officer, as the case may be, or, in the case of copyholds or lands of customary tenure, if the mortgage or further charge has been entered on any court rolls, the steward of the manor or his deputy respectively shall, on production of such receipt, verified by oath of any person, make an entry opposite the entry of the charge or mortgage, to the effect that such charge or mortgage is satisfied, and shall grant a certificate, either

on the said mortgage or charge or separately, to the like effect, which certificate shall be received in evidence in all courts and proceedings without any further proof, and which entry shall have the effect of clearing the register or record of such mortgage; and the registrar or recording officer shall be entitled to a fee of two shillings and sixpence for making the said entry and granting the said certificate, and such fee shall in Ireland be paid by stamps, and applied as the other fees of the Registry of Deeds Office and Record of Title Office are now by law directed to be paid and applied" (*o*).

Form of receipt.

The following is the form of receipt given in the schedule to the Act:—

> THE Building Society hereby acknowledge to have received all moneys intended to be secured by the within [*or* above] written deed.
>
> In witness whereof the seal of the society is hereto affixed this day of by order of the board of directors [*or* committee of management] in presence of secretary [*or* manager]. (L.S.)
>
> [*Other witnesses, if any required by the rules of the society.*]

Two modes of discharging mortgage: (1) reconveyance; (2) receipt.

This section, it will be noticed, prescribes two methods by which, on the discharge of a mortgage to an incorporated society in England or Ireland, the property comprised in the security may again become vested in the mortgagor or those claiming under him—(1) a reconveyance; (2) a statutory receipt. In the case of an unincorporated society, the corresponding section of the Act of 1836 merely authorizes the giving of a receipt, the section being in the following terms:—

6 & 7 Will. 4, c. 32, s. 5.

"It shall be lawful for the trustees named in any mortgage made on behalf of such societies, or the survivor or survivors of them, or for the trustees for the time being,

(*o*) Building Societies Act, 1874, s. 42.

to endorse upon any mortgage or further charge given by any member of such society to the trustees thereof for moneys advanced by such society to any member thereof, a receipt for all moneys intended to be secured by such mortgage or further charge, which shall be sufficient to vacate the same, and vest the estate of and in the property comprised in such security in the person or persons for the time being entitled to the equity of redemption, without it being necessary for the trustees of any such society to give any reconveyance of the property so mortgaged; which receipt shall be specified in a schedule to be annexed to the rules of such society, duly certified and deposited as aforesaid" (*p*).

Reconveyance.

If an incorporated society executes a reconveyance it must, by the express terms of sect. 42, be to the then owner of the equity of redemption, or to such persons and to such uses as he may direct. "I do not think any lawyer would say that the reconveyance authorized by the Act is authorized to be made to anybody but the person who at law is entitled to call for it. 'May indorse' merely means that the society may indorse a proper reconveyance upon the mortgage deed. But there is an alternative mode of proceeding. Instead of a reconveyance to the then owner of the equity of redemption the society may indorse a receipt, and then that receipt is to vacate the mortgage and vest the estate in the property 'in the person for the time being entitled to the equity of redemption.' Surely that is the same person as the owner of the equity of redemption in the former part of the section. They are equivalent words; the reconveyance is not to be to one person and the vesting to be in another. They are alternative modes of getting the legal estate into the same person, that is, in the owner for the time being of the equity of redemption" (*q*).

(*p*) 6 & 7 Will. 4, c. 32, s. 5.
(*q*) *Per* Jessel, M. R., in *Fourth City Mutual Benefit Building Society* v. *Williams*, 14 Ch. D. p. 146.

Reconveyance by unincorporated society.

If, however, a reconveyance were executed by a society governed by the Act of 1836, which merely authorizes the giving of a statutory receipt, then such a reconveyance would, it is conceived, be construed and have effect according to the same principles as any other conveyance. In a recent case under the Friendly Societies Act, 1875, which provides (*r*) that a receipt endorsed on or annexed to a mortgage to a friendly society shall vacate the same and vest the property therein comprised in the person entitled to the equity of redemption, but says nothing about executing a reconveyance, the trustees of a society instead of giving a receipt executed a reconveyance by deed. It was argued that the same effect must be given to it as if they had given a statutory receipt; but the learned judge (North, J.) declined to adopt this view, holding that the legal estate passed to the grantee under the deed in the ordinary way, and that the rights of the parties must be regulated accordingly (*s*).

Statutory receipt.

The Courts have frequently been called upon to determine the precise effect to be given to a statutory receipt under the Building Societies Acts. Some of the cases have arisen in connection with societies governed by the Act of 1836, others in connection with societies under the Act of 1874; but the wording of the two statutes on this point is so similar that all the authorities may, it is conceived, be considered as applying with almost equal force to either Act. It appears then to be now settled that when a society, being a legal mortgagee, is paid off and gives a receipt in the prescribed form, the effect is to shift the legal estate out of the society and vest it in the person who in equity is best entitled to call for it, although such person may not be the one who paid off the society. Thus, if there are successive equitable mortgagees and the society is

(*r*) Friendly Societies Act, 1875, 38 & 39 Vict. c. 60, s. 16, sub-s. 7.

(*s*) *Carlisle Banking Co.* v. *Thompson*, 28 Ch. D. 398; 33 W. R. 119; 53 L. T. 115.

paid off by the mortgagor, the effect will be to vest the legal estate in the equitable incumbrancer who is first in point of time; but if the society is paid off by a subsequent equitable incumbrancer, who has no notice of prior incumbrances, then he, as having the best equity, will be the person in whom the legal estate will vest. The question in each case is, who of all the persons interested in the equity of redemption has the best right to call for a conveyance of the legal estate. "It appears to me that the sole object of the legislature was to provide a cheap statutory substitute for a reconveyance of the legal estate, and that the indorsed receipt was meant to operate in favour of the person or persons who might at its date have the best right to a conveyance of the property mortgaged" (*t*).

Pease v. *Jackson.*

In *Pease* v. *Jackson*, a legal mortgage was made to a building society and a subsequent equitable charge given to the plaintiffs. The defendants on the mortgagor's request paid off the society. A receipt was accordingly endorsed on the mortgage and the deeds handed to the defendants, and the mortgagor executed a fresh mortgage to them, receiving at the same time a further advance. The defendants had no notice of the plaintiffs' charge. Lord Romilly, M. R., held, following his own decision in *Prosser* v. *Rice*, that the plaintiffs were entitled to priority (*u*). On appeal, however, Lord Cairns reversed this decision, holding that the defendants had the better equity, and therefore that the rule "*Qui prior est tempore, potior est jure*" did not apply; and he decided that on the

(*t*) *Per* Lord Watson, *Hosking* v. *Smith*, 13 App. Cas. p. 586; 58 L. J. Ch. 367; 37 W. R. 257; 59 L. T. 565; and see *Pease* v. *Jackson*, 3 Ch. 576; 37 L. J. Ch. 725; 17 W. R. 1; 32 J. P. 757; *Lawrence* v. *Clements*, 31 L. T. 670; *Fourth City Mutual Benefit Building Society* v. *Williams* and *Marson* v. *Cox*, 14 Ch. D. 140; 49 L. J. Ch. 245; 28 W. R. 572; 42 L. T. 615; *Robinson* v. *Trevor*, 12 Q. B. D. 423; 53 L. J. Q. B. 85; 32 W. R. 374; 50 L. T. 190; *Sangster* v. *Cochrane*, 28 Ch. D. 298; 54 L. J. Ch. 301; 33 W. R. 221; 51 L. T. 889; 1 Times L. R. 150; 49 J. P. 327; *Stamers* v. *Preston*, 9 Ir. C. L. R. 351. *Prosser* v. *Rice*, 28 Beav. 68, is overruled.

(*u*) *Pease* v. *Jackson*, 3 Ch. 578 n.; 16 W. R. 58.

satisfaction of the mortgage the legal estate vested either in the mortgagor or in the persons who had the best right to call for it, in either of which cases it had passed to the defendants. In the concluding portion of his judgment Lord Cairns stated that he had decided the case on the ground of the better equity, and this no doubt is the correct view. The decision was explained by Jessel, M. R., in a subsequent case as follows:—"As I understand the decision in *Pease* v. *Jackson*, it means this: the second mortgagee is asked to advance money to pay off the first mortgage. The second mortgagee says, 'Very well; I will pay the money due to the first mortgagee to the first mortgagee direct: I will take the deeds and the legal estate direct from him.' He goes to the first mortgagee with the assent of the mortgagor: the first mortgagee happens to be a building society, and says, 'The way we convey a legal estate is by a receipt endorsed;' and thereupon the second mortgagee pays the money and takes away the deeds. It turns out afterwards that there is a secret mortgagee and equitable owner claiming under a security prior in date to the second mortgagee. As I understand, Lord Cairns says that by the transaction between the building society and the second mortgagee there is an implied, if not an express, contract between the society, or their trustees, and the mortgagee, that if he gives them the money they will give him the legal estate. Through something unknown to either the society or the second mortgagee there may be a question on the statute, but the delivery of the deeds to the second mortgagee is intended to operate in pursuance of that contract or arrangement, and the man who pays his money to the owner of the legal estate under such a contract, expressed or implied, has a better right to call for it than the man who paid and got nothing. That appears to be intelligible: I do not suppose that anybody would doubt that if the second mortgagee went to the first mortgagee and actually paid him money

with the express contract to convey the legal estate, he would have a better right to call for it in respect of the money so paid than the man who paid and got nothing; and so, if it is implied by the contract that he is to have the legal estate, as I understand it was in *Pease* v. *Jackson*, he has the better title" (*x*).

Tacking further advance.

The further decision in *Pease* v. *Jackson*, however, viz., that under such circumstances there is no right to tack, did not commend itself to the late Master of the Rolls (Sir George Jessel) and is no longer law, having been expressly overruled by the House of Lords in *Hosking* v. *Smith* (*y*). In that case a member of certain unincorporated societies mortgaged leaseholds to them and made a second mortgage to the respondents. He then borrowed 6,000*l.* from the appellants, 2,000*l.* of which was employed in paying off the societies, who handed over the deeds to the appellants with the usual endorsed receipts; and the mortgagor himself executed a mortgage to the appellants to secure the 6,000*l.* Neither the societies nor the appellants had any notice of the mortgage to the respondents. Under these circumstances it was held that the appellants had priority over the respondents, not only in respect of the moneys employed in paying off the building societies, but also in respect of the balance of the loan paid directly to the mortgagor. "In my opinion," said Lord Watson, "sect. 5 simply dispenses with the necessity for a formal deed, and vests the legal estate in the person entitled to it as fully and to the same effect as if he had actually obtained a conveyance. It does not prescribe the consequences which must attend the equiva-

(*x*) *Marson* v. *Cox*, 14 Ch. D. p. 150; 49 L. J. Ch. 245; 28 W. R. 572; 42 L. T. 615; and see also *Robinson* v. *Trevor*, 12 Q. B. D. p. 429; 53 L. J. Q. B. 85; 32 W. R. 374; 50 L. T. 190.

(*y*) 13 App. Cas. 582; 58 L. J. Ch. 367; 37 W. R. 257; 59 L. T. 565; *Pease* v. *Jackson* was followed in *Lawrence* v. *Clements*, *Robinson* v. *Trevor*, and *Sangster* v. *Cochrane*, all of which, therefore, so far as they decide that there is no right to tack in such a case must be taken to be overruled.

lent which it provides; it leaves them to be ascertained according to the existing law, and they must therefore be the same as if a conveyance had been executed" (*z*).

Sangster v. *Cochrane*.

Sangster v. *Cochrane* (*a*) was a peculiar case. The facts were as follows: In 1872 four houses were mortgaged to a building society. In 1881 the plaintiff paid off the society at the mortgagor's request; and a receipt was endorsed in the usual way, the deeds were handed to the plaintiff, and a mortgage executed to him for a larger amount. The mortgagor having become bankrupt the plaintiff desired to take possession, and then discovered that in 1877 the mortgagor had sold and conveyed one of the houses to the defendant. The mortgagor, who was a solicitor, had acted for the defendant on the occasion of the sale and had suppressed the fact of the mortgage to the society. Under these circumstances Mr. Justice Kay held, following the previous decisions, though not agreeing with them, that the effect of the receipt was to vest the legal estate in the plaintiff and give him, to the extent of the money he paid to the society, priority over the defendant.

Effect of the receipt on the covenants in the mortgage.

Another question that has arisen in connection with this subject is as to the effect of a statutory receipt on the covenants in the mortgage.

In *Farmer* v. *Smith* (*b*) the estimated duration of a terminating society was thirteen years. The Court held, first, that on the construction of the rules and the mortgage deed an advanced member was entitled to redeem on payment of his subscriptions to the end of the thirteenth year, but would remain liable to pay subscriptions until 120*l.* a share had been realised for every member; and secondly, that the covenant in the mortgage deed extended

(*z*) 13 App. Cas. p. 591.

(*a*) 28 Ch. D. 298; 54 L. J. Ch. 301; 33 W. R. 221; 51 L. T. 889; 1 Times L. R. 150; 49 J. P. 327.

(*b*) 4 H. & N. 196; 28 L. J. Ex. 226; 5 Jur. N. S. 533, n.; 7 W. R. 362; 32 L. T. (O. S.) 371; 23 J. P. 230.

to the payment of these subscriptions subsequent to the thirteen years, and that the right to sue on the covenant would not be affected by the endorsement of a receipt. See also *Sparrow* v. *Farmer* (*c*). Both these, it will be seen, were cases under the Act of 1836.

Harvey v. *Municipal Building Society.*

In *Harvey* v. *Municipal Permanent Investment Building Society* (*d*), however, where the society was incorporated, the Court of Appeal held that where a member has executed a mortgage to secure advances and all payments due from him to the society, the endorsement of a receipt in accordance with sect. 42 is absolutely conclusive as against the society, and precludes them from saying that *anything* remains due from the member, even though the receipt was given under a mistake. Cotton, L. J., in his judgment, says:—"We must give effect to the words of the Act, which say that the receipt 'shall vacate the mortgage or further charge or debt.' It is contended that the alternative form of the clause points to a difference between a mortgage and a debt, and that the latter word only refers to a case where there is no mortgage. But even if it were so it would come to the same thing, for if the mortgage is vacated, the debt due on the covenant in the mortgage is also vacated. The society has therefore precluded itself from saying that there is any debt due, even though the receipt was given under a mistake. The counsel for the respondents raised two points, the first was that if all the moneys were not in fact paid, the statutory effect of the receipt did not arise. But that is not so; to say that after the indorsement is made the parties were left free to re-open the question as to the amount due would be to repeal the section. The second argument was that [the] two alternative provisions are really only two

(*c*) 26 Beav. 511; 28 L. J. Ch. 537; 5 Jur. N. S. 530; 33 L. T. (O. S.) 216.

(*d*) 26 Ch. D. 273; 53 L. J. Ch. 1126; 32 W. R. 557; 51 L. T. 408.

alternative modes of re-vesting the property in the mortgagor, but such a contention would strike out part of the second alternative. The receipt has, under the statute, not only the effect of re-vesting the property, but also of vacating the mortgage; therefore, in my opinion, the receipt precludes the society from saying that anything remains due on the mortgage. Then it is said that the debt on the plaintiff's original obligation on the shares still remains, though the mortgage is gone; but, in my opinion, it is clear that the mortgage covenant is to cover not only the mortgage money and interest but all the payments due on the shares, and even if all such payments have not been made, the debt is gone by reason of the indorsement. The case of *Sparrow* v. *Farmer* was referred to, but when we look at the facts of that case we find that all that was decided there was, that though the mortgage debt was so far gone that the shareholder was able to redeem his property, yet he still remained liable for payments in respect of shares still subsisting. But here all which was payable down to the time when the mortgage was satisfied is covered by the receipt, and there is no claim for payments accrued due since, but for sums due before the mortgage was vacated. Therefore that decision has no bearing on the present case." Lord Justice Fry in his judgment says:—"Then it was said that though the liability on the mortgage was satisfied, the liability on the shares remained; but all liability on the shares was merged in the mortgage, and as that is vacated the debt is gone also." It may seem somewhat difficult to reconcile this decision with *Farmer* v. *Smith*, which does not appear to have been cited. It should be remembered, however, that the two cases were decided under different Acts of Parliament, and that the earlier Act makes the receipt vacate the mortgage or further charge only, while under the later Act the effect of the receipt is to vacate the mortgage or further charge *or debt*.

In *Priestly* v. *Hopwood* (*e*), the plaintiff executed a mortgage to the society in the usual way, and then sold the equity of redemption to the defendant, who covenanted to pay "all subscriptions and other payments which should become due thenceforth in respect of the plaintiff's shares by virtue of the rules of the society;" but the shares remained in the plaintiff's name. One of the rules provided that the managers might "determine the amount of money to be paid by any mortgagor in full for the claims of the society upon his property, on payment of which the share or shares in respect of which the security was made should become wholly extinguished." The society having passed a resolution enabling members to redeem their mortgages on payment of 60*l.* 10*s.* per share, the defendant paid this sum on each of the plaintiff's shares and the usual receipt was endorsed on the mortgage. The Court held that the effect of the resolution and receipt was to extinguish the plaintiff's shares, and consequently to release the plaintiff from all liability to the society and the defendant from all liability to the plaintiff. *Priestly* v. *Hopwood.*

It is now settled that in ascertaining the yearly value to an advanced member of the property mortgaged by him to the society for the purpose of determining whether he is entitled in respect of such property to a vote for the county, only so much of the instalments as consists of interest is to be deducted; see *Rolleston* v. *Cope* (*f*). In that case the advance was repayable in ten years by monthly instalments, amounting in the whole to 41*l.* 8*s.* each year, two thirds being in discharge of principal and one third in payment of interest. The borrower had paid 350*l.*, and two years remained during which he still had to pay the monthly instalments, but he was entitled to redeem by a present payment of 73*l.* 1*s.* The annual Qualification of advanced member for county vote.

(*e*) 4 N. R. 239; 10 L. T. 646; 12 W. R. 1031; 28 J. P. 628.

(*f*) L. R. 6 C. P. 292; 1 Hop. & Colt. 488; 40 L. J. C. P. 160; 19 W. R. 927; 24 L. T. 390.

value of the property was 31*l.* 4*s.* The Court held that in ascertaining the yearly value of the estate to the member the interest only was to be deducted and not the payments made in reduction of principal, and that he had an estate of more than the yearly value of 40*s.* above all charges in respect of which he was entitled to a vote. "The question," said Bovill, C. J., "in these cases in future for the revising barrister to consider will be, whether, taking the payments which have been made for principal or purchase-money into account, and deducting the proper annual sums independently of the payments on account of principal, the claimant's interest in the property is of the value of 40*s.* by the year. If his interest in the property be found to be of that value, he will be entitled to the franchise; otherwise his claim to be placed on the list of voters must be disallowed." The earlier cases were conflicting.

CHAPTER IX.

THE MODE OF SETTLING DISPUTES BETWEEN A BUILDING SOCIETY AND ITS MEMBERS.

Settlement of disputes.

It has always been the policy of the law to provide for the settlement of disputes between building societies and their members in some simpler and cheaper mode than by having recourse to the ordinary tribunals, and special provision is made for this purpose by the Acts of Parliament by which these societies are governed. There is considerable difference, however, between the provisions applicable to incorporated and unincorporated societies, and it will be the more convenient plan therefore to consider them separately, though many of the decided cases and the principles therein laid down apply equally to either class of society.

1. *Incorporated Societies.*

Three modes of settling disputes.

The Building Societies Act, 1874, contemplates three modes of settling disputes between an incorporated society and any of its members, or any person claiming by or through any member or under the rules, viz.:—

(1) Arbitration.
(2) A reference to the registrar.
(3) An application to the County Court of the district in which the chief office or place of meeting for the business of the society is situated.

The rules of every society must state which of these three methods is to be adopted (*a*), and cannot provide for

(*a*) Building Societies Act, 1874, s. 16, sub-s. 9.

the adoption of more than one, whether generally or in particular cases or events, though the parties to a dispute may always agree to refer it to the registrar.

What is a "dispute."

The meaning of the word "disputes," as used in the Building Societies Acts, has itself been the subject of much controversy, and particularly whether it included questions arising out of mortgages made to a society by its members, so as to oust the ordinary jurisdiction of the Courts. In the case of societies under the *old* law it was finally decided by the House of Lords in the case of *Mulkern* v. *Lord* (*b*), that a rule to the effect that any dispute between the society and a member should be referred to arbitration did not prevent a member who had executed a mortgage to the society from bringing an action in the Chancery Division for an account and general relief. But the late Master of the Rolls, Sir George Jessel, held that this did not apply in the case of an incorporated society, and that where the rules of such a society directed a reference of disputes to arbitration the Court had no jurisdiction (*c*). This decision was followed in the Court of Appeal, under his Lordship's presidency, in *Hack* v. *London Provident Building Society* (*d*), and was finally approved and adopted by the House of Lords (Lords Blackburn and Watson, the Earl of Selborne, L. C., *diss.*) in *Municipal Permanent Investment Building Society* v. *Kent* (*e*).

Building Societies Act, 1884, s. 2.

In consequence of this decision the law was altered by the Building Societies Act, 1884, which provides that the word "disputes" in the Building Societies Acts, 1874 to 1884, or in the rules of any society thereunder, shall be deemed to refer only to disputes between the society and a

(*b*) 4 App. Cas. 182; 48 L. J. Ch. 745; 27 W. R. 510; 40 L. T. 594.

(*c*) *Wright* v. *Monarch Investment Building Society*, 5 Ch. D. 726; 46 L. J. Ch. 649.

(*d*) 23 Ch. D. 103; 52 L. J. Ch. 541; 31 W. R. 392; 48 L. T. 247.

(*e*) 9 App. Cas. 260; 53 L. J. Ch. 290; 32 W. R. 681; 51 L. T. 6; 48 J. P. 532.

member, or any representative of a member in his capacity of a member of the society, unless by the rules for the time being it shall be otherwise expressly provided: and, in the absence of such express provision, shall not apply to any dispute between any such society and any member thereof, or any person whatever, as to the construction or effect of any mortgage deed, or any contract contained in any document other than the rules of the society, and shall not prevent any society or any member thereof, or any person claiming through or under him, from obtaining in the ordinary course of law any remedy in respect of any such mortgage or other contract to which he or the society would otherwise be by law entitled (*f*).

What cases within the section.

This section, it may be observed, follows very closely the language of the Earl of Selborne in his speech in the case of *Municipal Permanent Investment Building Society* v. *Kent*, but, nevertheless, it has not been found very easy of construction. It has been decided, however, that the words "any such mortgage" in the latter part of the section refer to *any* mortgage made to a society by one of its members, and not only to mortgages as to the construction or effect of which there is a dispute, and consequently that the statute is no bar to an action by the society to recover money due from a member under a covenant in a mortgage (*g*); and it has also been held that a claim by a society against one of its officers for misappropriating and keeping in his hands moneys of the society is not a dispute between the society and a member "in his capacity

(*f*) Building Societies Act, 1884, s. 2. Even before this Act, it had been held by Pearson, J., that where a society sold to one of its members property mortgaged to it by other members, and the mortgagors brought an action to set aside the sale on various grounds of fraud, the action could not be referred: *French* v. *Municipal Permanent Building Society*, 53 L. J. Ch. 743; 50 L. T. 567.

(*g*) *Western Suburban and Notting Hill Permanent Benefit Building Society* v. *Martin*, 17 Q. B. D. 66, 609; 55 L. J. Q. B. 382; 34 W. R. 630; 54 L. T. 822; 2 Times L. R. 502, 672; 51 J. P. 36.

of a member" within the meaning of the section, that must be referred to arbitration (*h*).

Scope and meaning of the Act.

In his judgment in *Western Suburban and Notting Hill Permanent Benefit Building Society* v. *Martin*, Lord Justice Fry made the following observations on the scope and meaning of the Act: "There are three sorts of disputes which may occur between a building society and one of its members: first, disputes arising out of the social contract; secondly, disputes collateral to the social contract, such as those arising out of mortgages between the society and its members; and thirdly, disputes entirely extraneous to the social contract, such as a dispute in respect of work done by a member for the society. It is clear that the third class of disputes does not come within the scope of the rule in question. But shortly before the passing of the Act of 1884 it was decided, in *Municipal Permanent Investment Building Society* v. *Kent*, that disputes arising out of contracts collateral to the social contract, the second class of disputes, came within the scope of the rule. Sect. 2 of the Act of 1884 may be divided into three parts. The first part provides that the word '"disputes" . . . . . in the rules of any society shall be deemed to refer only to disputes between the society and a member, or any representative of a member, in his capacity of a member of the society,' unless otherwise expressly provided. It is contended that the words 'in his capacity as a member' qualify only the words 'any representative of a member,' but I do not so read them. Looking at the subsequent portions of the section, and having regard to the case of *Municipal Permanent Investment Building Society* v. *Kent*, it seems to me that they also qualify the word 'member.'

(*h*) *Municipal Permanent Investment Building Society* v. *Richards*, 39 Ch. D. 372; 58 L. J. Ch. 8; 37 W. R. 184; 58 L. T. 931; 59 L. T. 883; and see *Sinden* v. *Banks*, 3 El. & El. 623; 30 L. J. Q. B. 102; 7 Jur. N. S. 910; 9 W. R. 415; 3 L. T. 775; *S. C.*, *nom. Lindon* v. *Banks*, 25 J. P. 390, cited *post*, p. 196.

The second part of the section provides that the word 'disputes' shall not apply to any dispute as to the construction or effect of any mortgage deed in the absence of express provision. It seems to me that the words in the first part of the section, 'in his capacity of a member of the society,' refer to disputes arising out of the social contract that binds the members of the society together. Then as the most frequent disputes not arising out of that social contract were those arising out of mortgages, the legislature further emphasized, as to these disputes, what had already been impliedly enacted, by providing that in the absence of express provision any dispute as to the construction or effect of any mortgage deed or any contract contained in any document other than the rules of the society shall be entirely outside the arbitration clause. But other questions may arise as to mortgages, besides questions as to their construction or effect; and therefore the Act further provides that the arbitration clause shall not prevent any society or any member from obtaining in the ordinary course of law any remedy in respect of any mortgage" (*i*).

Withdrawing member.

A claim for payment by a member who has given notice to withdraw, he alleging that the society have funds sufficient to pay him and they contending that they have not, is clearly a "dispute" that must be referred to arbitration (*k*).

Action will be stayed.

Where the matter in difference is one that ought to be referred to arbitration, no action will be allowed to proceed except under very special circumstances. The Court has jurisdiction, however, to appoint a receiver or grant an injunction pending a reference to arbitration, if a proper case can be made out for doing so (*l*); and, if an action

(*i*) 17 Q. B. D. p. 617.

(*k*) *Walker* v. *General Mutual Building Society*, 36 Ch. D. 777; 57 L. T. 574; 3 Times L. R. 847; 52 J. P. 278; and see the other cases cited *post*, p. 196.

(*l*) *Law* v. *Garrett*, 8 Ch. D. 26; 26 W. R. 426; 38 L. T. 9; *Halsey* v. *Windham*, W. N. (1882) 108; L. J. N. C. (1882) 90.

has been brought, may appoint a receiver or grant an injunction and by the same order stay all further proceedings in the action, except for the purpose of carrying out the order for a receiver or an injunction, with a view to a reference to arbitration (*m*).

Where the rules direct a reference to arbitration.

1. Where the rules of the society direct disputes to be referred to arbitration, arbitrators must be named and elected in the manner such rules provide, or, if there be no such provision, at the first general meeting of the society, none of the arbitrators being beneficially interested, directly or indirectly, in its funds. Of these arbitrators a certain number, not less than three, must be chosen by ballot in each case of dispute, the number of the arbitrators and mode of ballot being determined by the rules of the society. The names of the arbitrators must be duly entered in the minute book of the society, and, in case of the death or refusal or neglect of any of the arbitrators to act, the society, at a general meeting, must name and elect an arbitrator to act in the place of the arbitrator dying, or refusing or neglecting to act (*n*).

Selection of arbitrators.

The provision directing that arbitrators shall be elected at the first general meeting of the society is, it would seem, to be considered as directory merely, and not compulsory; and if for any reason it happened that the arbitrators could not be chosen at the first meeting, an appointment at a second, and perhaps at a third meeting would not necessarily be bad (*o*). What is contemplated by the Act,

(*m*) *Compagnie du Sénégal* v. *Woods*, 53 L. J. Ch. 166; 32 W. R. 111; 49 L. T. 527; W. N. (1883) 180; *Pini* v. *Roncoroni*, [1892] 1 Ch. 634; 61 L. J. Ch. 218; 40 W. R. 297; 66 L. T. 255.

(*n*) Building Societies Act, 1874, s. 34.

(*o*) *Per* North, J., *Christie* v. *Northern Counties Permanent Benefit Building Society*, 43 Ch. D. p. 66. "There is a known distinction between circumstances which are of the essence of a thing required to be done by an Act of Parliament and clauses merely directory. The precise time in many cases is not of the essence:" *per* Ld. Mansfield, *R.* v. *Loxdale*, 1 Bur. 447; and see further, as to the distinction

however, is the appointment of a standing body of arbitrators, out of whom three are to be chosen by lot to decide any particular dispute, and the society cannot therefore hold a meeting and elect five arbitrators after a writ has been issued against them, and then insist on having the action referred: see *Christie* v. *Northern Counties Permanent Benefit Building Society* (*p*). In that case the rules provided that every dispute between the society and any member, on which the decision of the board should not be deemed satisfactory, should be settled by a reference to arbitration, pursuant to the Building Societies Act, 1874, and that five arbitrators should be elected by the members at a general meeting, and in case of dispute the names of the arbitrators should be written on pieces of paper, and placed in a box, and the three whose names were first drawn out by the complaining party should be the arbitrators to decide the matter in dispute. A dispute arose between an investing member and the society as to the amount which he was entitled to receive on withdrawal, and ultimately he brought an action against the society to enforce his claim. Up to this time no arbitrators had been elected under the rules. After the service of the writ a general meeting of the members was held, and five persons were elected as arbitrators. The society then took out a summons to stay further proceedings in the action, and that the dispute might be referred to arbitration in pursuance of the rules. The learned judge, North, J., held that the rule contemplated the appointment of a standing body of arbitrators, out of whom three were to be chosen by lot to decide any particular dispute, and that the society could not, after a litigation had commenced to which they were parties, select the tribunal to decide it, and he dismissed the summons with costs.

between directory and imperative provisions in an Act of Parliament, *Pearce* v. *Morrice*, 2 A. & E. p. 96; Maxwell on Statutes, p. 450, 2nd ed.

(*p*) 43 Ch. D. 62; 59 L. J. Ch. 210; 38 W. R. 280; 61 L. T. 796.

Award is final.

The award of the arbitrators, or the major part of them, will determine the dispute (*q*), and there is no appeal whatever from their decision, nor can the proceedings be removed into any Court or restrained by injunction (*r*).

Questions of law.

The arbitrators may, however, at the request of either party, state a case for the opinion of the Supreme Court on any question of law (*s*), and they are *bound* to do so on the direction of the High Court or a judge under sect. 19 of the Arbitration Act, 1889 (*t*).

Discovery.

The arbitrators may also grant such discovery, as to documents and otherwise, as on November 2nd, 1874, could be granted by any Court of law or equity, such discovery to be made by such officer of the society as the arbitrators may determine (*u*).

Form of award.

The award need not be in any particular form, except that it must limit a time within which it is to be complied with (*x*), but the form prescribed by sect. 27 of the Act 10 Geo. 4, c. 56, *post*, p. 191, may conveniently be adopted.

Enforcing award.

Should either of the parties to the dispute refuse or neglect to comply with or conform to the award within the time limited therein, the County Court, upon good and sufficient proof being adduced of the award having been made and of the refusal of the party to comply therewith, will enforce compliance upon the petition of any person concerned (*y*).

Refusal or failure to arbitrate.

If either party to the dispute declines to arbitrate, or the arbitrators fail to make any award, application must be made to the County Court (*z*).

(*q*) Building Societies Act, 1874, s. 34.

(*r*) *Ibid.* s. 36.

(*s*) *Ibid.*

(*t*) 52 & 53 Vict. c. 49; *In re Knight and Tabernacle Permanent Building Society*, [1891] 2 Q. B. 63; 60 L. J. Q. B. 633; 39 W. R. 507; 64 L. T. 204; 65 L. T. 550; 55 J. P. 534; 7 Times L. R. 286, 544; affirmed in D. P., W. N. (1892) 98; 8 Times L. R. 616.

(*u*) Building Societies Act, 1874, s. 36.

(*x*) *Ibid.* s. 34.

(*y*) *Ibid.* ss. 4, 34. As to the practice on such a petition, see Pitt-Lewis on County Courts, vol. II. p. 159, 4th edit.

(*z*) Building Societies Act, 1874, s. 35, sub-s. 1; and see *post*, p. 190, as to the mode of application.

Arbitration Act, 1889.

It is important to observe that the Arbitration Act, 1889, applies to every arbitration under any Act passed either before or after the 26th August, 1889, as if the arbitration were pursuant to a submission, except in so far as the provisions of the Act of 1889 are inconsistent with the Act regulating the arbitration, or with any rules or procedure authorized or recognized by such Act (*a*). "Now what is the meaning of 'inconsistent with the Act regulating the arbitration'? Sect. 19 creates, no doubt, an obligation to state a case when directed by the Court or a judge; and of course in one sense the presence of the obligation to state a case is inconsistent with the absence of such obligation. Therefore it may be argued that where under a previous Act there was no obligation to state a case, while under a later Act such an obligation is created, there is an inconsistency between the Acts. But that is not, in my view, the real meaning of the 'inconsistency' referred to in sect. 24. I think there must be an inconsistency of this kind, viz., that the obligation to state a special case would be so at variance with the machinery and with the mode of procedure indicated by the previous Act, that, if that obligation were added, the machinery of the previous Act would not work. Now, what was the machinery and mode of procedure indicated by the Building Societies Act? The 34th and 35th sections respectively provide for the appointment of arbitrators, and for the hearing and determining of all disputes. Then sect. 36 provides that 'every determination by arbitrators, or by the Court, or by the registrar under this Act of a dispute shall be binding and conclusive on all parties, and shall be final to all intents and purposes, and shall

(*a*) Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 24; and see *In re Knight and Tabernacle Permanent Building Society*, [1891] 2 Q. B. 63; 60 L. J. Q. B. 633; 39 W. R. 507; 64 L. T. 204; 65 L. T. 550; 55 J. P. 534; 7 Times L. R. 286, 544; affirmed in D. P., W. N. (1892) 98; 8 Times L. R. 616, cited *ante*, p. 186.

not be subject to appeal, and shall not be removed or removable into any court of law, or restrained or restrainable by the injunction of any court of equity.' Then comes the proviso that 'the arbitrators may, at the request of either party, state a case for the opinion of the Supreme Court of Judicature on any question of law.' Is the obligation to state a case for the opinion of the Supreme Court inconsistent with anything in that 36th section? It must be observed that the case is to be stated on any question of law arising in the course of the reference. It must necessarily precede the determination of the reference. It is a condition precedent to the award. It cannot in any way prevent the determination by the arbitrators from being binding and conclusive upon all parties, nor does it render such determination otherwise than final to all intents and purposes, nor make it subject to appeal, or removable into any court of law, or restrainable by the injunction of any court of equity. All those attributes of an award under the 36th section must still attach to it, notwithstanding that in the course of the proceedings the arbitrators may be required to state a special case for the opinion of the Court. In fact, the 19th section of the Act of 1889 only adds to the proviso which already existed, giving power to the arbitrators, whenever they think fit, to state a case, the additional provision that they shall, when the Court requires them, state a case. I think, therefore, that there is nothing whatever in the obligation to state a case inconsistent with the machinery provided by the Act of 1874, and that, therefore, the appeal must succeed. It appears to me that the Act of 1889 was intended to introduce a code with regard to arbitrations, and that its operation is only excluded from arbitrations with which it is absolutely inconsistent" (*b*).

(*b*) *Per* Fry, L. J., *In re Knight and Tabernacle Permanent Building Society*, [1891] 2 Q. B. p. 69.

Determination of disputes by registrar.

2. The registrar may determine a dispute in the following cases:—

(a) Where the parties to the dispute agree to refer it to him (*c*).

(b) Where the rules of the society direct disputes to be referred to the registrar (*d*).

Submission.

The submission of a dispute to the registrar must be in duplicate in the form T. given in the Treasury Regulations (*e*).

Refusal of either party to proceed.

Where the rules of the society provide that disputes shall be submitted to the registrar, and either party to the dispute refuses or neglects to fill up and sign the portion of the submission relating to his case, the other party may send the submission to the registrar. The registrar may require either party to support any statement in the submission by statutory declaration; and if he requires the parties to appear, he must give them notice in the form V. of the time and place of hearing (*f*).

Award.

The registrar's award will have the same effect as that of arbitrators (*g*); it must be in a prescribed form W., and a fee of one pound will be payable for it (*h*). If more than one hearing or an adjournment becomes necessary, an additional pound will be payable for every hearing after the first, and for every adjournment (*i*).

Decision is final.

The decision of the registrar is absolutely final, but he may state a case for the opinion of the Supreme Court on any question of law, and may grant discovery (*k*). For the form of an order for discovery and the fee payable on it, see Treasury Regulations, 1884, rr. 23, 25, Appendix B., *infra*.

(*c*) Building Societies Act, 1874, s. 34.
(*d*) *Ibid.*
(*e*) Treasury Regulations, 1884, r. 20, Appendix B., *infra*.
(*f*) *Ibid.* rr. 20, 21, *infra*.
(*g*) Building Societies Act, 1874, s. 34.
(*h*) Treasury Regulations, 1884, rr. 22, 25.
(*i*) *Ibid.*
(*k*) Building Societies Act, 1874, s. 36.

Determination of disputes by County Court.

3. A dispute may be determined by the County Court in the following cases (*l*) :—

(a) Where application has been made by either party to the other to have the dispute settled by arbitration, and such application has not been complied with within forty days.

(b) Where arbitrators have refused or have for twenty-one days neglected to make any award.

(c) Where the rules direct disputes to be referred to the Court.

(d) Where the rules direct disputes to be referred to justices.

In the first two cases the proceeding is expressly directed to be by petition; in cases (c) and (d) proceedings should be commenced by plaint and summons in the ordinary way, and the summons or particulars annexed should state correctly the nature of the dispute referred, and the relief which the plaintiff claims (*m*).

The decision of the County Court judge will be final, but he may state a case for the Supreme Court on any question of law, and may grant discovery (*n*).

2. *Unincorporated Societies.*

Settlement of disputes in unincorporated society.

The statutory provisions relating to the settlement of disputes in the case of unincorporated societies, are contained in sections 27, 28 and 29 of the Act 10 Geo. 4, c. 56, and sections 7 and 8 of the Act 4 & 5 Wm. 4, c. 40. They may be summarized as follows:—

Rules must direct whether disputes shall be settled by arbitration or justices.

The rules must state whether a reference of every matter in dispute between the society, or any person acting under them, and any individual member thereof, "or person

(*l*) Building Societies Act, 1874, s. 35.

(*m*) *Ibid.*; Pitt-Lewis on County Courts, vol. II. p. 297, 4th edit.; County Court Rules, 1889, Ord. XLI.

(*n*) Building Societies Act, 1874, s. 36.

claiming on account of any member," shall be made to arbitrators, or to the justices of the peace for the county in which the society is formed (*o*).

Where rules direct a reference to arbitration.

1. If the rules direct a reference of disputes to arbitration, arbitrators must be elected by the society, or general committee thereof, none of the arbitrators being beneficially interested, directly or indirectly, in the funds of the society, of whom a certain number, not less than three, must be chosen by ballot in each case of dispute, the number of the arbitrators and mode of ballot being determined by the rules of the society. The names of the arbitrators must be duly entered in the book of the society in which the rules are entered, and in case of the death, or refusal or neglect of any or all of the arbitrators to act, the society or general committee must elect others in their stead (*p*).

The award of the arbitrators, or the major part of them, according to the true purport and meaning of the rules of the society, must be in the following form:—

Form of award.

We, the major part of the arbitrators duly appointed by the Society established at , in the county of , do hereby award and order, that A. B. [*specifying by name the party or the officer of the society*] do, on the day of , pay to C. D. the sum of [*or* we do hereby reinstate in *or* expel A. B. from the said society, *as the case may be*]. Dated this day of , One thousand eight hundred and .

E. F.
G. H.

The award will be binding and conclusive on all parties, and will be final, nor can it be removed into any Court or restrained by injunction (*q*).

Award may be enforced by justices.

Should either of the parties in dispute refuse or neglect to comply with the decision of the arbitrators, or the major part of them, any one justice of the peace residing within the county within which the society is held, upon good

(*o*) 10 Geo. 4, c. 56, s. 27. (*p*) *Ibid.* (*q*) *Ibid.*

and sufficient proof being adduced before him of such award having been made, and of the refusal of the party to comply therewith, upon complaint made by or on behalf of the party aggrieved, may summon the person against whom such complaint shall be made to appear at a time and place to be named in such summons; and upon his appearance, or in default thereof, upon due proof, upon oath, of the service of such summons, any two justices of the peace may proceed to make such order thereupon as to them may seem just; and if the sum of money awarded, together with a sum for costs not exceeding the sum of ten shillings, be not immediately paid, it may be levied by distress in manner provided by the Act, but any sum paid by any officer of the society, levied on his property in pursuance of the award of arbitrators or order of any justices, must be repaid, with all damages accruing to him out of the moneys of the society (*r*).

Refusal to arbitrate or make an award.

Where the rules direct a reference to arbitration, and the society does not within forty days comply with a request to arbitrate, or the arbitrators neglect or refuse to make an award, the dispute may be determined by two justices (*s*).

Where rules direct a reference to justices.

2. Where the rules direct that any matter in dispute shall be decided by justices of the peace, any justice, on complaint being made to him of any refusal or neglect to comply with the rules of the society by any member or officer thereof, may summon the person against whom such complaint shall be made to appear at a time and place to be named in such summons, and upon his appearance, or in default thereof, upon due proof, on oath or affirmation, of the service of such summons, any two justices may proceed to hear and determine the complaint according to the rules of the society. And any award for the payment of money may be enforced in the manner

(*r*) 10 Geo. 4, c. 56, s. 27. (*s*) 4 & 5 Will. 4, c. 40, s. 7.

directed to be used in case of neglect to comply with the decision of arbitrators (*t*).

Orders of justices to be final.

Every sentence, order, and adjudication of the justices will be absolutely final and conclusive to all intents and purposes, and cannot be removed into any Court of law or restrained by injunction (*u*).

Provision in case of expulsion.

If a member has been expelled and either arbitrators or justices order him to be reinstated, they may, in default of reinstatement, award him a sum of money (*x*).

What is a "dispute" within the Acts.

There has been some difference of opinion as to what is a "dispute" within the meaning of the above provisions; but it may, it is conceived, be taken to be now settled that the parties will not be compelled to arbitrate, and so deprived of their ordinary right to have recourse to a Court of law, except in a case where the dispute is—(1) between the society and one of its members simply *quâ* member; and (2) of such a character that the machinery provided by the Acts is adequate to its complete settlement. When the relation of mortgagor and mortgagee has once been created between a member and the society, it is well settled that the provisions as to arbitration no longer apply.

"When," said Lord Hatherley, "you come to look into the authorities which were cited, they amount to this, that where the case went beyond the internal arrangements of the society, and introduced something which might be within their functions in the ordinary course of their business, but yet still outside the whole scheme and scope of the society itself, then a person who had a much larger interest than any of those contemplated among the ordinary members could not be deprived of recourse to the ordinary tribunals of the land. And more especially he could not be so deprived in regard to mortgages, where,

(*t*) 10 Geo. 4, c. 56, s. 28.
(*u*) *Ibid.* s. 29.
(*x*) 4 & 5 Will. 4, c. 40, s. 8.

as in this case, possession was taken, where there was a question as to account against mortgagees for wilful default, and where there was an account also for outlay and expenditure on the mortgaged premises by the mortgagees, and where certain other questions had arisen which could not be properly sifted unless you go to the proper Court, which has all the means and the powers of sifting and dealing with them. I think therefore, my Lords, when you see what the real nature of the case is, there cannot be a doubt that this tribunal fell short of the requirements of the case, and that the party who sought to have a decree for account and redemption was entitled to it" (*y*). And in the same case Lord O'Hagan in the course of his speech said:—"This being the nature of the transaction, what is the machinery which the appellants seek to apply to it? That which manifestly was intended to deal with small affairs amongst humble people, and with simple controversies easily brought to a short and final issue. It aimed to secure mutual assistance to the working classes, in circumstances of difficulty, and to settle their ordinary disputes and enforce their limited demands, at the least expense and in the promptest way. It contemplated the daily dealing of the members one with another, and was in no way adapted to the arrangement of considerable claims and the solution of doubtful questions."

Where an action, and not a reference to arbitration, is the proper remedy.

The following have been held to be disputes that must be settled by action or suit, and could not be referred to arbitration:—

An action by an advanced member against the trustees of the society, who were mortgagees in possession under mortgages amounting to upwards of 16,000*l.*, for an account and general relief, the rules simply directing that disputes between a member and the society should

(*y*) *Mulkern* v. *Lord*, 4 App. Cas. p. 192.

be referred to arbitration pursuant to the 10 Geo. 4, c. 56 (*z*) :

An action of ejectment by trustees against an advanced member who had mortgaged leaseholds to the society by sub-demise with a clause of forfeiture in certain events (*a*) :

An action by trustees against a member on a covenant in a mortgage deed for payment of the subscriptions and interest payable on his shares (*b*) :

A suit for redemption by an advanced member against the trustees (*c*) :

An action by an advanced member for a discharge of his mortgage and delivery up of his title deeds, and for repayment of moneys alleged to have been paid by him in excess of the proper amount through mistake of fact (*d*) :

An action by a transferee of shares against the trustees for refusing to admit him to the privileges of membership, the trustees insisting that he was not a member (*e*), a dispute as to whether a person is a member or not, clearly not being a dispute between the society and the plaintiff as a member (*f*) :

An action by the trustees of a society against the

(*z*) *Mulkern* v. *Lord*, 4 App. Cas. 182; 48 L. J. Ch. 745; 27 W. R. 510; 40 L. T. 594; 43 J. P. 492; and see *Morrison* v. *Glover*, 4 Ex. 430; 19 L. J. Ex. 20; 14 L. T. (O. S.) 204; 14 J. P. 84, which is indistinguishable from *Mulkern* v. *Lord*.

(*a*) *Doe dem. Morrison* v. *Glover*, 15 Q. B. 103; 15 L. T. (O. S.) 111.

(*b*) *Farmer* v. *Giles*, 5 H. & N. 753; 30 L. J. Ex. 65; 8 W. R. 649; 2 L. T. 387; 24 J. P. 663; and see *Cutbill* v. *Kingdom*, 1 Ex. 494; 17 L. J. Ex. 177.

(*c*) *Fleming* v. *Self*, 3 De G. M. & G. 997; 24 L. J. Ch. 29; 1 Jur. N. S. 25; 3 Eq. Rep. 14; 3 W. R. 89; 24 L. T. (O. S.) 101; 18 J. P. 772.

(*d*) *Buckle* v. *Lordonny*, 56 L. J. Ch. 437; 35 W. R. 360; 56 L. T. 273; 3 Times L. R. 369; 51 J. P. 422.

(*e*) *Prentice* v. *London*, L. R. 10 C. P. 679; 44 L. J. C. P. 353; 33 L. T. 251; 39 J. P. 711.

(*f*) *Per* Brett, J., L. R. 10 C. P. p. 687; and see *Willis* v. *Wells*, 36 Sol. J. 594; 8 Times L. R. 653.

treasurer for money which he had received and had failed to pay over to them (*g*) :

A suit by an unadvanced withdrawing member for an account and payment of what should be found due (*h*).

In *R.* v. *Trafford* (*i*), a dispute arose between the society and a withdrawing member as to the terms on which he was entitled to redeem a mortgage. The society refused to refer the dispute to arbitration, and two justices therefore made an order under 4 & 5 Will. 4, c. 40, s. 7. *Held*, that they had no jurisdiction, the dispute having arisen not solely from the relation of member and society, but from that of mortgagor and mortgagee.

Where reference to arbitration is the proper remedy.

On the other hand, where a member withdrew from the society, and on the trustees refusing to pay him the value of his shares brought an action against them for the amount, it was held that arbitration was the proper remedy, and the Court had no jurisdiction (*j*) ; and the fact that a notice of withdrawal has been given and assented to by the trustees does not prevent the application of a rule providing for arbitration (*k*) ; the person who withdraws being treated as a member, for the purpose of arbitration, until his rights are determined (*l*).

(*g*) *Sinden* v. *Banks*, 3 El. & El. 623 ; 30 L. J. Q. B. 102 ; 7 Jur. N. S. 910 ; 9 W. R. 415 ; 3 L. T. 775 ; *S. C. nom. Lindon* v. *Banks*, 25 J. P. 390 ; and see *Municipal Permanent Investment Building Society* v. *Richards*, 39 Ch. D. 372 ; 58 L. J. Ch. 8 ; 37 W. R. 184 ; 58 L. T. 931 ; 59 L. T. 883, cited *ante*, p. 182 ; *Mullock* v. *Jenkins*, 14 Beav. 628.

(*h*) *Smith* v. *Lloyd*, 26 Beav. 507 ; *Doubleday* v. *Hosking*, 15 Eq. 344,n., *sed qu.* ; and see *Thompson* v. *Planet Building Society*, cited *infra*.

(*i*) 4 El. & Bl. 122 ; 24 L. J. M. C. 20 ; 1 Jur. N. S. 252 ; 24 L. T. (O. S.) 308 ; 19 J. P. 6.

(*j*) *Ex parte Payne*, 5 D. & L. 679 ; 18 L. J. Q. B. 197 ; 13 Jur. 634 ; *Crisp* v. *Bunbury*, 8 Bing. 394 ; 1 M. & Sc. 646 ; *Timms* v. *Williams*, 3 Q. B. 413 ; 11 L. J. Q. B. 210 ; *Huckle* v. *Wilson*, 2 C. P. D. 410 ; 26 W. R. 98 ; *Johnson* v. *Altrincham Permanent Benefit Building Society*, 49 L. T. 568 ; 48 J. P. 24.

(*k*) *Wright* v. *Deeley*, 4 H. & C. 209 ; 30 J. P. 631 ; W. N. (1866) 74 ; *Huckle* v. *Wilson*.

(*l*) *Armitage* v. *Walker*, 2 K. & J. p. 222 ; 2 Jur. N. S. 13 ; 26 L. T. (O. S.) 182 ; 20 J. P. 53, *per* Wood, V.-C. ; *Walker* v. *General Mutual Building Society*, 36 Ch. D. 777 ; 57 L. T. 574 ; 3 Times L. R. 847 ; 52 J. P. 278 ; *Davies* v. *Second*

In *Thompson* v. *Planet Benefit Building Society* (*m*), a bill was filed by a shareholder against the society and its directors, alleging misconduct against the latter. The plaintiff prayed a declaration that he was not bound by certain new rules that had been passed, and he also prayed the benefit of certain of the original rules and for relief against the directors personally. The bill was demurred to both by the society and the directors, and after full argument it was held by Bacon, V.-C., that the dispute was one for the decision of which arbitrators were the proper authority, and the demurrers were allowed, but, in consideration of the state of the authorities, without costs. His lordship declined to follow *Doubleday* v. *Hosking*, considering the weight of authority was against it; and he did not feel himself much bound by *Smith* v. *Lloyd*, being of opinion that that case had been decided by Lord Romilly under the erroneous idea that the 10 Geo. 4, c. 56, had been repealed.

Thompson v. *Planet Benefit Building Society.*

In *Trott* v. *Hughes* (*n*), a member who had given notice of withdrawal moved to restrain the directors from parting with the funds of the society, on the ground that he had a primary lien on them for the return of the subscriptions he had paid, and that he apprehended a misapplication of the funds by the directors. Lord Cranworth, V.-C., held that the Court of Chancery was not the proper forum for the decision of such questions in face of a rule referring disputes to the directors, and if their decision was not satisfactory then to arbitration, and refused the motion with costs.

Trott v. *Hughes.*

In *Reeves* v. *White* (*o*), it was held that the trustees could not sue on covenants in a mortgage made by an advanced

Reeves v. *White.*

Chatham Building Society, 61 L. T. 680; *Mitchells* v. *Caledonian Building Society*, 13 R. 918; 23 Sc. L. R. 651.

(*m*) 15 Eq. 333; 42 L. J. Ch. 364; 21 W. R. 474; 28 L. T. 549; 37 J. P. 468.

(*n*) 16 L. T. (O. S.) 260.

(*o*) 17 Q. B. 995; 21 L. J. Q. B. 169; 16 Jur. 637; 18 L. T. (O. S.) 271; 16 J. P. 118.

member to the society; but this is clearly not the law now, see *Mulkern* v. *Lord* and the other cases cited above.

"Person claiming on account of any member."

Another question that has arisen is as to who are to be included under the words "person claiming on account of any member." In *Kelsall* v. *Tyler* (*p*) the Court of Exchequer seem to have been clearly of opinion that the case of an executor of a deceased member did not fall within the language, "for he does not claim on account of the member but on his own account." So in *Prentice* v. *London* (*q*) a transferee of shares, which the trustees insisted had been duly forfeited by them before notice of the transfer, was held not to be a person claiming on account of a member, but a person claiming on his own account.

Executor.

Transferee.

Withdrawing member.

A person who has given notice to withdraw, however, but has not yet been paid, if not still a member (though this is the better opinion), is at any rate a person claiming on account of a member, because his sole claim is to receive back payments made by himself in the character of member (*r*).

Administrator.

Where the rules provided that on the death of a member his executors or administrators should be entitled to his shares and might vote and act as fully as the deceased member might have done if living, and the administrator of a deceased member acted and was treated by the society as the legal representative of the deceased, the Court held that the society were bound to treat him as a member for all purposes, and that a dispute which had arisen between them must be determined by arbitration (*s*).

Arbitration Act, 1889.

The provisions of the Arbitration Act, 1889, will apply to the reference except in so far as they are inconsistent with

(*p*) 25 L. J. Ex. (N. S.) 153; 11 Ex. 513; 26 L. T. (O. S.) 226; 20 J. P. 150.

(*q*) L. R. 10 C. P. 679; 44 L. J. C. P. 353; 33 L. T. 251; 39 J. P. 711.

(*r*) *Per* Fry, L. J., *Walker* v. *General Mutual Building Society*, 36 Ch. D. p. 786; 57 L. T. 574; 52 J. P. 278; 3 Times L. R. 847; and see *Mackenzie* v. *Everton and West Derby Permanent Benefit Building Society*, 61 L. T. 680.

(*s*) *Knox* v. *Shepherd*, 2 L. T. 351.

the above Acts or the rules or procedure recognized by them (*t*).

The arbitrators must give notice of their intention to proceed with the reference. Where one of the rules of the society provided that all notices should be deemed duly served by posting the same to the members at their last registered address, the Court held that this only related to the ordinary business of the society, and did not apply to notices by arbitrators (*u*).

Notice must be given by arbitrators.

The arbitrators may decline to hear counsel (*x*).

When the arbitrator has made his award the Court has no power to alter it unless there is error on the face of it or it is shown to have been corruptly obtained (*y*).

Award cannot be altered by the Court.

A justice is bound to issue his warrant to enforce the performance of the award when once made; he cannot decline to do so on the ground that there has been a misapplication of the funds of the society (*z*).

(*t*) Arbitration Act, 1889, s. 24, and see *In re Knight and Tabernacle Permanent Building Society*, [1891] 2 Q. B. 63; 60 L. J. Q. B. 633; 39 W. R. 507; 64 L. T. 204; 65 L. T. 550; 7 Times L. R. 286; 55 J. P. 534, 544; affirmed in D. P., W. N. (1892) 98; 8 Times L. R. 616, cited *ante*, pp. 186, 187.

(*u*) *Hilton* v. *Hill*, 9 L. T. 383; 27 J. P. 760.

(*x*) *Re Macqueen*, 9 C. B. N. S. 793.

(*y*) *Armitage* v. *Walker*, 2 K. & J. 211; 2 Jur. N. S. 13; 26 L. T. (O. S.) 182; 20 J. P. 53.

(*z*) *Hughes* v. *Layton*, 33 L. J. M. C. 89; 10 Jur. N. S. 513; *S. C. nom. R.* v. *D'Eyncourt*, 4 B. & S. 820; 9 L. T. 712; 28 J. P. 116; *S. C. nom. Hughes* v. *D'Eyncourt*, 3 N. R. 420; 12 W. R. 408.

CHAPTER X.

TERMINATION, DISSOLUTION, AND WINDING-UP.

How a building society may come to an end.

THERE appear to be five different ways in which a building society may come to an end:—(1) termination; (2) dissolution in manner prescribed by the rules; (3) dissolution under an instrument of dissolution; (4) dissolution under sect. 26 of the Act of 10 Geo. 4, c. 56, assuming this section to be applicable to the case of a building society; (5) winding-up under the Companies Acts. Of these the first and fifth apply both to incorporated and unincorporated societies; the second and third apply only to incorporated societies; the fourth applies (if at all) only to unincorporated societies.

The manner in which any incorporated society, whether terminating or permanent, is to be terminated or dissolved must be set forth in its rules (*a*).

Termination.

1. The object of a terminating society is, as we have seen, to accumulate by the subscriptions of the members, and the interest derived from their investment, a fund sufficient to give a stipulated sum to each member, and then to divide the whole amongst them. The length of time required to accomplish this result varies according to the rate of subscription and the degree of success or non-success that attends the society's operations, but twelve or fourteen years may be taken as about the average period. When the agreed amount has been realized the accounts of the different members, some of whom will have received their

(*a*) Building Societies Act, 1874, s. 16, sub-s. 14.

shares in advance, are made up; the fund is divided amongst the members according to their several rights and interests, and the society is at an end. The rules may, of course, provide that the society shall terminate on a given date, and the assets be then divided and the society dissolved (*b*), but this is not usual; it is much more common for the rules to provide for the society continuing its operations until a certain amount per share has been realized.

In the case of an incorporated society the Act expressly provides that the society may terminate "upon the happening of any event declared by its rules to be the termination of the society" (*c*); and it defines a terminating society as one "which by its rules is to terminate at a fixed date or when a result specified in its rules is attained" (*d*).

Dissolution in manner prescribed by the rules.

2. The Act of 1874 provides that an incorporated society may be dissolved in manner prescribed by its rules (*e*), and whatever course they point out for effecting the dissolution must be strictly pursued. Notice in duplicate, in a specified form, of the commencement and termination of the dissolution must be given within fourteen days to the registrar, who will return one copy of each notice to the society, endorsed with the word "Registered" and duly authenticated (*f*). A fee of two shillings and sixpence is payable for registering a notice of the commencement or termination of a dissolution (*g*).

1894. 1 Ch. 374.

Dissolution by instrument of dissolution.

3. The society, if incorporated, may be dissolved by instrument of dissolution with the consent of three-fourths of the members, holding not less than two-thirds of the number of shares in the society, testified by their signa-

(*b*) See for an instance *Re The Second Commercial Benefit Building Society*, 48 L. J. Ch. 753.
(*c*) Building Societies Act, 1874, s. 32, sub-s. 1.
(*d*) *Ibid.* s. 5.
(*e*) *Ibid.* s. 32, sub-s. 2.
(*f*) Treasury Regulations, 1884, rr. 16, 17, 26, Appendix B., *infra*.
(*g*) *Ibid.* r. 25, Appendix B., *infra*.

tures to the instrument. The instrument of dissolution must set forth—

(a) the liabilities and assets of the society in detail;
(b) the number of members, and the amount standing to their credit in the books of the society;
(c) the claims of depositors and other creditors, and the provision to be made for their payment;
(d) the intended appropriation or division of the funds and property of the society;
(e) the names of one or more persons to be appointed trustees for the special purpose, and their remuneration.

Registration.

It must be registered in the manner provided for the registration of rules, and will be binding on all the members of the society (*h*).

Form of instrument.

An instrument of dissolution must be on foolscap paper in the Form M. annexed to the Treasury Regulations, and must be signed in duplicate and accompanied by a statutory declaration in the Form N. annexed to the Regulations; and the registrar will return one of the duplicates to the society with a certificate in the Form O. (*i*). The form of instrument, however, given in the Regulations is very meagre, and requires in practice to be supplemented by the addition of various other provisions adapted to the case of the particular society in question; it is an important document, and should always be settled by counsel.

Conveyance of legal estate by trustee under instrument of dissolution.

In a case that occurred in Scotland an instrument of dissolution appointed a trustee for the special purpose of dissolution, and empowered him (*inter alia*) "to sell by public or private sale the heritable subjects belonging to the society, to call up and receive payment of all sums due to the said society by bonds and dispositions in security and to exercise the powers of sale therein contained, to grant discharges thereof and dispositions following thereon,

(*h*) Building Societies Act, 1874, s. 32, sub-s. 3.

(*i*) Treasury Regulations, 1884, rr. 13, 14, Appendix B., *infra*.

and generally all powers necessary for the realization and distribution of the assets competent to a trustee by the law of Scotland." On a sale by the trustee of property in mortgage to the society, the purchaser objected that he had no power to convey the legal estate, and the trustee accordingly presented a petition to the Court of Session for authority to convey without first completing a legal title in his own person. The Court held, however, that the trustee was in this dilemma: either he had, under the statute, a good title to convey already, in which case he did not need the assistance of the Court; or he had not a good title to convey, in which case the Court had no authority to give him one; and the application was therefore refused (*k*).

Withdrawing members to be reckoned in ascertaining majority.

Withdrawing members whose notices have expired, but who have not been paid are still members, and must be taken into account in ascertaining the statutory majority required to sign an instrument of dissolution, even though the rules provide that members who have given such notice shall cease to take part in the affairs of the society (*l*). In a recent case on this subject the Court said:—"Then we come to this—which has also been very much relied on—'Members being thirteen weeks in arrear (unless out of employment or sick) or having given notice of withdrawal shall, from the date of such notice, cease to take part in the affairs of the society.' But with respect to those persons who are in arrear, where a member is thirteen weeks in arrear, then, though there has been no expulsion and no forfeiture of his shares, he ceases to take any part in the affairs of the society; because, of course, if he were expelled, or his shares were forfeited, it would not be necessary to say that he shall no longer 'take part in the affairs of the society.' The same rule

(*k*) *Re Campbell*, 28 Sc. L. R. 147 18 Sess. Ca 4th S. 149

(*l*) *Sibun* v. *Pearce*, 44 Ch. D. 354; 38 W. R. 658; 62 L. T. 388; 63 L. T. 123; 6 Times L. R. 262.

applies to those who have given notice of withdrawal, that they are not to take further part in the affairs of the society; and it has been said that this means that they are no longer continuing members. I say, No; it is necessary that they shall continue members; and this rule is not inconsistent with their doing so. Then it is said that if they continue members, this rule, which prevents them from taking part in the affairs of the society, prevents them from signing this deed, and therefore prevents the necessary majority being obtained. But, in my opinion, that is not the meaning, because to say, 'not take part in the affairs of the society,' must mean 'not take part in the affairs of the society as a continuing business;' it will not prevent them doing that which, in my view, the Act of Parliament requires them to do, if they accede to the dissolution, to show their assent by signing this deed. That, in my opinion, is not 'taking part in the affairs of the society' within the fair meaning of this rule, but doing something which the Act of Parliament requires to be done in order to get the dissolution in the event which has happened. Members who are thirteen weeks in arrear, or who have given notice of withdrawal, are not to take part in the affairs of the society in this sense, that they shall not have any voice as to how the affairs are to be conducted if it is a going concern; but, in my opinion, it is very reasonable that they should have a voice as to whether a dissolution shall take place in the particular way provided by this particular deed" (*m*).

Signatures.

It will be noticed that the Act expressly requires that the consent of the members shall be "testified by their signatures to the instrument of dissolution;" it has recently been held in Scotland that these words must be construed strictly, and that signature by an agent of a member is not sufficient (*n*).

(*m*) *Per* Cotton, L. J., 44 Ch. D. at p. 367.

(*n*) *Second Edinburgh and Leith* 493*rd Starr-Bowkett Building Society* v. *Aitken*, 29 Sc. L. R. 456.

Alterations in instrument of dissolution.

Alterations, which will require to be registered (*o*), may be made in the instrument of dissolution with the consent of three-fourths of the members, holding not less than two-thirds of the shares of the society testified by their signatures (*p*); and they must be declared to and certified in the same way as the original instrument (*q*).

Notice of termination of dissolution.

Notice in duplicate of the termination of the dissolution must be given to the registrar within fourteen days from such termination, and he will return one copy to the society endorsed with the word "Registered," and duly authenticated (*r*).

Fees.

A fee of ten shillings is payable for the certificate of registry of an instrument of dissolution, or any alteration therein; and a fee of two shillings and sixpence for registry of notice of the termination of the dissolution (*s*).

Dissolution under 10 Geo. 4, c. 56, s. 26.

4. The old Friendly Societies Act of 1829 (*t*), sect. 26, provided a means of dissolving a friendly society before its objects were attained, but only with the consent of five-sixths in value of the existing members testified in the manner pointed out by the section. Whether this provision is one of those that apply to unincorporated building societies (*u*) does not appear to have ever been expressly decided; see, however, *In re London and Metropolitan Counties Benefit Building and Investment Society* (*x*), cited *infra*, p. 218, where a similar provision was contained in the rules of the society.

Winding-up under the Companies Acts.

5. The remaining method of putting an end to a building society is by winding-up under the Companies Acts, 1862 to 1890.

(*o*) Building Societies Act, 1874, s. 32, sub-s. 3.
(*p*) *Ibid.*
(*q*) Treasury Regulations, 1884, r. 15, Appendix B., *infra*.
(*r*) *Ibid.* r. 17, Appendix B., *infra*.
(*s*) *Ibid.* r. 25, Appendix B., *infra*.
(*t*) 10 Geo. 4, c. 56; see the Act in Appendix D., *infra*.
(*u*) See 6 & 7 Will. 4, c. 32, s. 4.
(*x*) 1 Meg. 135; W. N. (1889) 18; 24 L. J. N. C. 23.

Incorporated societies wound up in County Court.

If the society is *incorporated* the Act of 1874 provides that it may be wound up either voluntarily under the supervision of the County Court, or by the County Court, if that Court shall so order, on the petition of any member authorized by three-fourths of the members present at a general meeting of the society specially called for the purpose to present the same on behalf of the society, or on the petition of any judgment creditor for not less than fifty pounds, but not otherwise (*y*).

Provisions of Companies Acts apply.

The winding-up provisions of the Companies Acts, 1862 to 1890, and the rules made thereunder, will apply to the winding-up, which will be conducted in all respects as if the society were a company registered under the Companies Acts; and the costs will be taxed according to the scale of costs for the time being in use in the Supreme Court (*z*).

Notice to registrar.

Notice of the commencement of the winding-up must be given to the registrar in duplicate, within fourteen days from the date of an order for winding up subject to the supervision of the Court, or of an order for winding up by the Court, as the case may be, in the Form P a. annexed to the Treasury Regulations, and the registrar will return one copy to the society, endorsed with the word "Registered," and duly authenticated (*a*).

Scotland.

In Scotland the Court having jurisdiction is the Sheriff's Court of the county in which the chief office or place of meeting for the business of the society is situate (*b*), and proceedings in the liquidation are regulated by the Act of Sederunt of March 17th, 1882, which will be found printed in Appendix C., *infra*.

(*y*) Building Societies Act, 1874, s. 32, sub-s. 4.

(*z*) County Court Rules, 1889, Ord. XLI. r. 9. The previous County Court Order on this subject was not very clear, but it was decided that its effect was to incorporate the winding-up provisions of the Companies Acts: see *Jones* v. *Swansea Cambrian Benefit Building Society*, 29 W. R. 382; *S. C. nom. Andrews* v. *Swansea, &c. Society*, 50 L. J. Q. B. 428; 44 L. T. 106; 45 J. P. 507.

(*a*) Building Societies Act, 1874, s. 32, sub-s. 4; Treasury Regulations, 1884, r. 16 a, Appendix B., *infra*.

(*b*) Building Societies Act, 1874, s. 32, sub-s. 4.

In Ireland the Court having jurisdiction is the Civil Bill Court within the jurisdiction of which the society's office or place of meeting is situate (*c*). Ireland.

It is not clear whether sect. 32 sub-sect. 4 of the Act of 1874 authorizes a purely voluntary winding-up, though, if it do not, it is not easy to see how a supervision order, which necessarily pre-supposes a voluntary liquidation, can properly be made. No difficulty, however, seems to have been felt in making such an order in *Re Sunderland Thirty-Second Universal Building Society* (*d*). In that case, the society at a general meeting held on the 17th June, 1887, passed an extraordinary resolution for winding-up in the terms of sect. 129 (3) of the Companies Act, 1862, and appointed liquidators, and resolved that a Mr. Morgan a member of the society be authorized to present a petition for a supervision order. On the 20th June he presented a petition accordingly, and on the 2nd July the County Court made a supervision order. In the course of the liquidation, the County Court judge made an order on a summons taken out by the liquidators directing one Jackson to repay to them a sum of 1,000*l.* improperly advanced to him out of the funds of the society, and this order was affirmed on appeal by the Divisional Court (Field and Wills, JJ.), who, while holding that the validity of the winding-up order could not be questioned in that proceeding, did not rest their judgment on that, but decided affirmatively that the supervision order was good. "Their reasons for so holding are not so easily stated. The judgments leave one in doubt whether either judge was prepared to hold that a resolution for winding-up would have been good if not followed by a petition and a supervision order, Winding-up under supervision.

(*c*) Building Societies Act, 1874, s. 32, sub-s. 4.

(*d*) 21 Q. B. D. 349; 37 W. R. 95. The reports of this case are very brief, and the statement in the text is taken from Buckley on the Companies Acts, p. 230, 6th ed., where the learned author states that he has had an opportunity of perusing the papers in the case, including a shorthand note of the judgments.

for both found themselves upon the fact that the winding-up resolution was accompanied by the resolution to present a petition, and that the petition immediately followed, so that (*per* Field, J.), 'to treat that as anything but one transaction is not possible.' At the same time, the Court plainly held that the order was a valid order, and it would seem impossible logically to arrive at this conclusion without affirming that a building society may wind up voluntarily whether the jurisdiction of the Court to make a supervision order is then invoked or not. Leave to appeal was asked and refused" (*e*).

In Scotland, too, no difficulty seems to be felt in the sheriff making a supervision order; see, for an instance, *Scottish Property Investment Company Building Society* v. *Boyd* (*f*).

The author is not aware, however, of any case in which an incorporated building society has in fact been wound up voluntarily under the Companies Acts; in practice, a building society that desires to settle its affairs without the interference of the Court always has recourse to an instrument of dissolution, and this is no doubt the right method to adopt.

High Court has no jurisdiction where society incorporated.

The High Court has no jurisdiction to make a winding-up or supervision order in the case of an incorporated building society (*g*). Where a winding-up petition which had been presented to the Palatine Court of Lancaster had been heard and dismissed on the merits, and the petitioner gave notice of appeal, but between the date of the notice and the hearing of the appeal the society obtained a certificate of incorporation under the Building Societies Act, 1874, the Court of Appeal held that their jurisdiction was clearly gone, and that they could only dismiss the appeal,

(*e*) Buckley on the Companies Acts, p. 230, 6th ed.

(*f*) 12 R. pp. 129, 131.

(*g*) *Re London and Suburban Bank*,' [1892] 1 Ch. 604; 61 L. J. Ch. 316; 40 W. R. 326; 66 L. T. 716; 8 Times L. R. 357, decided under the Industrial and Provident Societies Act, 1876, 39 & 40 Vict. c. 45, s. 17.

which they accordingly did, but, under the circumstances, without costs (*h*).

Transfer to High Court.

It has been held, however, in one case, that a winding-up petition might, under special circumstances, be transferred from the County Court to the High Court, even after the petition had been opened in the County Court (*i*). It is not easy to see whence the jurisdiction to make this order was derived, as only matters commenced under the County Courts Act, 1888, and no others, are removable into the High Court (*k*), and a petition to wind up a building society is not commenced under that Act, but under the Building Societies Act, 1874.

Transfer of shares pending winding-up.

In the case of a sale and transfer of shares in a society after a compulsory winding-up order, the transferee is not entitled to be registered as owner of the shares without the sanction of the Court; the Court has power to order the rectification of the register of members by the insertion of such transferee's name; but the exercise of that power is discretionary, and such an order ought not to be made except on strong grounds (*l*).

Unincorporated society may be wound up compulsorily.

If the society is *unincorporated*, it may be wound up compulsorily under Part 8 of the Companies Act, 1862, as an unregistered company (*m*).

(*h*) *Re The Old Swan and West Derby Permanent Benefit Building Society, Ex parte Evatt*, 57 L. T. 381.

(*i*) *Re East Dulwich 295th Starr-Bowkett Building Society*, 39 W. R. 32; W. N. (1890) 164; 6 Times L. R. 448, North, J.

(*k*) See County Courts Act, 1888, 51 & 52 Vict. c. 43, ss. 124, 126.

(*l*) *Re Onward Building Society*, [1891] 2 Q. B. 463; 60 L. J. Q. B. 752; 39 W. R. 718; 40 W. R. 26; 65 L. T. 516; 7 Times L. R. 601; 56 J. P. 260.

(*m*) *Re No.* 3 *Midland Counties Benefit Building Society*, 4 De G. J. & S. 468; 33 L. J. Ch. 739; 11 Jur. N. S. 229; 13 W. R. 399; 4 N. R. 536; 29 J. P. 613; reversing *S. C.* below, 33 L. J. Ch. 520; 10 Jur. N. S. 505; 10 L. T. 258; 28 J. P. 295; *Re Doncaster Permanent Building Society*, 3 Eq. 158; 15 W. R. 102; 15 L. T. 270; 31 J. P. 310; *Re Cilfoden Benefit Building Society*, 3 Ch. 462; *Re Queen's Benefit Building Society*, 6 Ch. 815; 40 L. J. Ch. 381; 19 W. R. 597; 24 L. T. 346; *Re Professional, &c. Building Society*, 6 Ch. 856; 19 W. R. 1153; 25 L. T. 397.

The provisions of the Act on this subject are contained in sects. 199—204, and are as follows:—

Part VIII.

Application of Act to Unregistered Companies.

Companies Act, 1862, ss. 199—204.

199. Subject as hereinafter mentioned, any partnership, association, or company, except railway companies incorporated by Act of Parliament, consisting of more than seven members, and not registered under this Act, and hereinafter included under the term unregistered company, may be wound up under this Act, and all the provisions of this Act with respect to winding-up shall apply to such company, with the following exceptions and additions:—

(1.) An unregistered company shall, for the purpose of determining the Court having jurisdiction in the matter of the winding-up, be deemed to be registered in that part of the United Kingdom where its principal place of business is situate; or, if it has a principal place of business situate in more than one part of the United Kingdom, then in each part of the United Kingdom where it has a principal place of business; moreover, the principal place of business of an unregistered company, or (where it has a principal place of business situate in more than one part of the United Kingdom) such one of its principal places of business as is situate in that part of the United Kingdom in which proceedings are being instituted, shall for all the purposes of the winding-up of such company be deemed to be the registered office of the company:

(2.) No unregistered company shall be wound up under this Act voluntarily or subject to the supervision of the Court:

(3.) The circumstances under which an unregistered company may be wound up are as follows; (that is to say,)

(a) Whenever the company is dissolved or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;

(b) Whenever the company is unable to pay its debts;

(c) Whenever the Court is of opinion that it is just and equitable that the company should be wound up.

(4.) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts—

(a) Whenever a creditor to whom the company is indebted, at law or in equity, by assignment or otherwise, in a sum exceeding fifty pounds then due, has served on the company, by leaving the same at the principal place of business of the company, or by delivering to the secretary or some director or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum or to secure or compound for the same to the satisfaction of the creditor:

(b) Whenever any action, suit, or other proceeding has been instituted against any member of the company for any debt or demand due, or claimed to be due, from the company, or from him in his character of member of the company, and notice in writing of the institution of such action, suit, or other legal proceeding having been served upon the company by leaving the same at the principal place of business of the company, or by delivering it to the secretary, or some director, manager, or principal officer of the company, or by otherwise serving the same in such manner as

the Court may approve or direct, the company has not within ten days after service of such notice paid, secured, or compounded for such debt or demand, or procured such action, suit, or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against such action, suit, or other legal proceeding, and against all costs, damages, and expenses to be incurred by him by reason of the same:

(c) Whenever, in England or Ireland, execution or other process issued on a judgment, decree, or order obtained in any Court in favour of any creditor in any proceeding at law or in equity, instituted by such creditor against the company, or any member thereof as such, or against any person authorized to be sued as nominal defendant on behalf of the company, is returned unsatisfied:

(d) [*Relates only to mining companies in the Stannaries.*]

(e) Whenever, in Scotland, the induciæ of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made:

(f) Whenever it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

200. In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable, at law or in equity, to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves, or to pay or contribute to the payment of the costs, charges, and expenses of winding up the company, and every such contributory shall be liable to contribute to the assets of the company in the course of the winding-up all

sums due from him in respect of any such liability as aforesaid; but in the event of the death, bankruptcy, or insolvency of any contributory, or marriage of any female contributory, the provisions hereinbefore contained with respect to the personal representatives, heirs, and devisees of a deceased contributory, and to the assignees of a bankrupt or insolvent contributory, and to the husband of married contributories, shall apply.

201. The Court may, at any time after the presentation of a petition for winding up an unregistered company, and before making an order for winding up the company, upon the application of any creditor of the company, restrain further proceedings in any action, suit, or proceeding against any contributory of the company, or against the company as hereinbefore provided, upon such terms as the Court thinks fit.

202. Where an order has been made for winding up an unregistered company in addition to the provisions hereinbefore contained in the case of companies formed under this Act, it is hereby further provided that no suit, action, or other legal proceeding shall be commenced or proceeded with against any contributory of the company in respect of any debt of the company, except with the leave of the Court, and subject to such terms as the Court may impose.

203. If any unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the Court may by the order made for winding up such company, or by any subsequent order, direct that all such property, real and personal, including all interest, claims, and rights into and out of property, real and personal, and including things in action, as may belong to or be vested in the company, or to or in any person or persons on trust for or on behalf of the company, or any part of such property, is to vest in the official liquidator or official liquidators by his or their official name or names, and thereupon the same or such part thereof as

may be specified in the order shall vest accordingly, and the official liquidator or official liquidators may, in his or their official name or names, or in such name or names and after giving such indemnity as the Court directs, bring or defend any actions, suits, or other legal proceeding relating to any property vested in him or them, or any actions, suits, or other legal proceedings necessary to be brought or defended for the purposes of effectually winding up the company and recovering the property thereof (*n*).

204. The provisions made by this part of the Act with respect to unregistered companies shall be deemed to be made in addition to and not in restriction of any provisions hereinbefore contained with respect to winding up companies by the Court, and the Court or official liquidator may, in addition to anything contained in this part of the Act, exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed under this Act; but an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this part of this Act.

Where number of members is below seven.

Sect. 199, it will be observed, only applies where the society consists of more than seven members. Where the society consisted of only five members at the date of the petition, though there had formerly been many more, Romilly, M. R., held that there was jurisdiction to make an order to wind up (*o*). In another case, however, Jessel, M. R., held that no order could be made unless there were seven members at the date when the petition was presented, and he ordered the petition to stand over for an action to be commenced as in the case of a partnership; and the

(*n*) See *post*, p. 250, as to this section.

(*o*) *Re National Permanent Benefit Building Society*, W. N. (1867) 225.

society was ultimately wound up in this way (*p*). The word "members" in this section does not necessarily mean "shareholders" (*q*).

Winding-up, in what Court.

Whether the Court having jurisdiction will be the High Court (or Palatine Court), or the County Court, depends on the amount of the society's assets. If they exceed ten thousand pounds the petition for an order to wind up must be presented to the High Court, or, in the case of a society within the jurisdiction of either of the Palatine Courts of Lancaster and Durham, either to the High Court or the Palatine Court having jurisdiction. If, on the other hand, the assets do not exceed ten thousand pounds, and the principal place of business of the society is situate within the jurisdiction of a County Court having jurisdiction under the Companies (Winding-up) Act, 1890, the petition must be presented to that County Court (*r*).

Jurisdiction of County Courts.

Any County Court, however, which on the 1st of January, 1891, was excluded from jurisdiction in bankruptcy, is also excluded from jurisdiction under the Winding-up Act, 1890, and its district is, for the purposes of jurisdiction under that Act, attached to the Court to which on that date that district was attached for the purposes of jurisdiction in bankruptcy (*s*).

Metropolitan County Courts.

In the case of the Metropolitan County Courts, their districts are, for the purposes of jurisdiction under the Winding-up Act, attached to the

(*p*) *In re Bolton Benefit Loan Society*, 12 Ch. D. 679; 49 L. J. Ch. 39; 28 W. R. 164.

(*q*) *Per* Cotton, L. J., *Re South London Fish Market Co.*, 39 Ch. D. p. 335; 37 W. R. 3; 60 L. T. 68.

(*r*) Companies (Winding-up) Act, 1890, 53 & 54 Vict. c. 63, s. 1, sub-ss. 1, 2, 3. It is assumed that these provisions apply to the case of an unincorporated building society, though the words of sub-ss. 2 and 3, "Where the amount of the *capital of a company paid up or credited as paid up* exceeds," &c., are certainly not very apt. It is clear, however, from s. 32, sub-s. 3, that the Act was intended to apply to unregistered companies, and there seems no reason, therefore, why it should not apply to an unincorporated building society. If this view is incorrect, then the petition must in every case, whatever the amount of the assets, be presented to the High Court or Palatine Court.

(*s*) Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 1, sub-s. 5; Order of Nov. 29, 1890; W. N. (1890) p. 577.

High Court (*t*). In the High Court the jurisdiction under the Winding-up Act is exercised by Mr. Justice Vaughan Williams, sitting and acting for the purpose of exercising such jurisdiction as an additional judge of the Chancery Division (*u*). A County Court in exercising the jurisdiction to wind up an unincorporated society has the same powers as the High Court (*x*).

Transfer of proceedings.

The winding-up, or any proceedings therein, may at any time and at any stage, and either with or without application from any of the parties thereto, be transferred from one Court to another Court, or may be retained in the Court in which the proceedings were commenced, although it may not be the Court in which the proceedings ought to have been commenced (*y*). The mode of transfer is regulated by rules 8—15 of the Companies Winding-up Rules, 1890, and an order to transfer the petition from the County Court may be made by the judge of the High Court before any order has been made on the petition (*z*).

Special case for the opinion of the High Court.

If any question arises in any winding-up proceeding in a County Court, which all the parties to the proceeding, or which one of them and the judge of the Court, may desire to have determined in the first instance in the High Court, the judge will state the facts in the form of a special case for the opinion of the High Court, and thereupon the special case and the proceedings, or such of them as may be required, will be transmitted to the High Court for the purposes of the determination (*a*).

Who may apply for a winding-up order.

Incorporated societies.

In the case of an incorporated society, as we have seen, no one can petition for a winding-up order or, it would seem, a supervision order, except (a) a member authorized by three-fourths of the members present at a general

(*t*) *Re The Court Bureau* (No. 2), W. N. (1891) 15.

(*u*) Companies (Winding-up) Act, 1890, s. 2; Order of March 26th, 1892, W. N. (1892), p. 21.

(*x*) Companies (Winding-up) Act, 1890, s. 1, sub-s. 6.

(*y*) *Ibid.* s. 3.

(*z*) *Re Laxon & Co.*, 36 Sol. J. 592; 8 Times L. R. 852; 40 W. R. 614.

(*a*) Companies (Winding-up) Act, 1890, s. 3, sub-s. 3.

meeting specially called for the purpose, or (b) a judgment creditor for not less than fifty pounds (*b*).

Unincorporated societies.

In the case of an unincorporated society, however, there is no such restriction, and an order to wind up may be made at the instance of an outside creditor (*c*), of an unadvanced member who has given notice of withdrawal (*d*), or of an advanced member (*e*). But though an outside creditor is, except under special circumstances, entitled to a winding-up order *ex debito justitiæ*, there is no such absolute right in the case of a member; the Court has a discretion, and if it sees that an order to wind up will be prejudicial to the best interests of the society, and in fact will do more harm than good, or is sought for the purpose of obtaining an undue advantage over other members, the petition will be dismissed (*f*). So the order will be refused where the cost would be out of all proportion to the assets of the society and the petitioner's object can be attained in another way (*g*).

Loan *ultra vires*.

Where the petitioner had lent money to a society which had no power to borrow, so that the loan in fact created no debt, the petition was dismissed (*h*).

In a recent case a petition was presented by an unadvanced member whose shares were not fully paid up.

(*b*) Building Societies Act, 1874, s. 32, sub-s. 4, *ante*, p. 206.

(*c*) *Re No. 3 Midland Counties Benefit Building Society*, 4 De G. J. & S. 468; 33 L. J. Ch. 739; 11 Jur. N. S. 229; 13 W. R. 399; 4 N. R. 536; 29 J. P. 613; reversing *S. C.* below, 33 L. J. Ch. 520; 10 Jur. N. S. 505; 10 L. T. 258; 28 J. P. 295.

(*d*) *Re Queen's Benefit Building Society*, 6 Ch. 815; 40 L. J. Ch. 381; 19 W. R. 597; 24 L. T. 346.

(*e*) *Re Professional, Commercial, and Industrial Benefit Building Society*, 6 Ch. 856; 19 W. R. 1153; 25 L. T. 397.

(*f*) *Ibid.*; *Re Planet Benefit Building and Investment Society*, 14 Eq. 441; 41 L. J. Ch. 738; 20 W. R. 935; 27 L. T. 638; *Re London Permanent Benefit Building Society*, 17 W. R. 513, 717; 20 L. T. 388; 21 L. T. 8; *Martin* v. *Scottish Savings Investment and Building Society*, 17 S. C. L. R. 221; *Re Tyneside Permanent Building Society*, 20 L. J. N. C. 130, where, however, under the circumstances, the dismissal was without costs.

(*g*) *Re The Second Commercial Benefit Building Society*, 48 L. J. Ch. 753.

(*h*) *Re National Permanent Benefit Building Society, Ex parte Williamson*, 5 Ch. 309; 18 W. R. 388; 22 L. T. 284; 34 J. P. 341.

The society was solvent, so far as its creditors were concerned, though there were not funds sufficient for payment of what was due to members. The 20th rule was as follows:—"No dissolution of this society shall take place unless its affairs be deranged, or its principles prove inadequate to promote its objects, or its funds be insufficient to meet the claims upon them, or from any other cause rendering the dissolution absolutely necessary, and then only in pursuance of the provisions of the Act 10 Geo. 4, c. 56, s. 26; and any member in any way attempting to promote a dissolution of the society but for the causes before named, shall forfeit all his moneys, benefit, and interest therein, and be forthwith expelled the same."

It appeared that the petitioner had made no attempt to comply with this rule, that the petition was not supported by any one else, and that meetings of depositors and shareholders had both expressed the opinion that a winding-up would be against the interests of the depositors, and disastrous to the shareholders. Under these circumstances the learned judge (North, J.) held, that though he clearly had jurisdiction, under the Act of 1862, to make a winding-up order, it was not a case in which it would be "just and equitable" to exercise it, and he accordingly dismissed the petition with costs (*i*).

General principles of winding-up in the case of a building society.

It is beyond the scope of the present work to enter into the general law and practice of winding-up, which will be found in treatises that are in the hands of every practitioner. It must suffice here to notice those points which are peculiar to the winding-up of building societies, or are of special importance in relation to them, and to attempt to point out the general principles on which the liquidation of such a society proceeds. These principles may, it is conceived, be summarized as follows, though so much de-

(*i*) *In re London and Metropolitan Counties Benefit Building and Investment Society*, 1 Meg. 135; W. N. (1889) 18; 24 L. J. N. C. 23.

pends, in each case, on the rules of the particular society in question, that any general rules can only be accepted and acted on with caution :—

1. A building society, though it may be wound up under the Companies Acts, is neither a joint-stock company, nor a common law partnership. It is an association of a special kind, formed and regulated under particular Acts of Parliament for special purposes, and the rights and liabilities of the members are to be determined by the particular contract into which they have entered, and which is to be found in the rules of the society.
2. Unadvanced or investing members are only liable as between the different classes of members themselves to contribute to the assets of the society to the extent (if any) to which the payments due in respect of their shares are in arrear at the commencement of the winding-up, though they may in some cases be under special liability to preference shareholders.
3. In the absence of special contract, advanced members are entitled to redeem, and so put an end to their connection with the society, by paying up the balances remaining owing on their securities, and are not bound to remain members for the purpose of bearing a share of any losses that may have been sustained by the society.
4. Members who have given notices to withdraw, which have expired before the commencement of the winding-up, and members whose shares are realized or completed at the commencement of the winding-up, will, if the rules so provide, be entitled to be paid out of the assets after satisfaction of the outside creditors and in priority to members who have not given such notice or whose shares are not realized.

5. After payment of debts and making due provision for priorities of withdrawn and realized shares, the surplus assets are divisible among the unadvanced members according to the interests which existed at the commencement of the winding-up.

The foregoing rules apply, generally speaking, both to incorporated and unincorporated societies; but in determining the liability of members of incorporated societies, the provisions of sect. 14 of the Act of 1874 must, of course, be borne in mind; see as to this section, *ante*, p. 124.

Building society is not a company or partnership.

1. The authority for this first proposition will be found in the cases of *Brownlie* v. *Russell* (*k*); *Auld* v. *Glasgow Working Men's Building Society* (*l*); and *Tosh* v. *North British Building Society* (*m*); in the two former cases, the society was incorporated; in the last, it was unincorporated. In his judgment in *Brownlie* v. *Russell* (*n*), Lord Selborne thus expressed himself: "This is not a joint-stock company; still less is it a common law partnership; but it is a society of a special kind, formed and regulated under particular Acts of Parliament for special purposes. A fallacy, which has pervaded much of the argument that has been offered to your Lordships in support of the appeal, is that, because the members of this society are associated together for a common purpose, therefore there must, in equity and in reason, and by implication from their contract, although not in terms expressed, be a right on the part of some of the members to hold all the others liable in contribution to them for any loss which in the actual

(*k*) 8 App. Cas. 235; 48 L. T. 881; 47 J. P. 757; 10 R. (H. L.) 19; 20 Sc L. R. 481; affirming with a variation the decision below, 8 R. 917; 18 Sc. L. R. 661.

(*l*) 12 App. Cas. 197; 35 W. R. 632; 56 L. T. 776; 14 R. (H. L.) 27; 24 Sc. L. R. 486; 3 Times L. R. 78; reversing the decision below, 12 R. 1320; 22 Sc. L. R. 883.

(*m*) 11 App. Cas. 489; 35 W. R. 413; 14 R. 6; 24 Sc. L. R. 128; reversing on this point *S. C.* below, *nom. Trustees of the North British Building Society*, 12 R. 1271; 22 Sc. L. R. 833.

(*n*) 8 App. Cas. p. 248.

state of things they may suffer. It appears to me that such a result cannot be arrived at by presumptions or inferences from the law relating to companies of a different kind, but that we must look at this particular contract."

Partnership Act, 1890.

The Partnership Act, 1890 (*o*), it may be observed, expressly provides that the relation between members of any company or association which is (a) registered as a company under the Companies Act, 1862, or any other Act of Parliament for the time being in force and relating to the incorporation of joint stock companies, or (b) formed or incorporated by or in pursuance of any other Act of Parliament, shall not be a partnership within the meaning of the Partnership Act.

Liability of unadvanced members.

2. That the liability of unadvanced or investing members is, in ordinary cases, limited as above stated is shown by the cases of *Brownlie* v. *Russell*, *Tosh* v. *North British Building Society*, and *Re Middlesbrough*, *Redcar*, *and Saltburn*, *&c. Building Society* (*p*), where the society was unincorporated. In his judgment in the last-named case, the learned judge, Stirling, J., after referring to *Brownlie's* and *Tosh's Cases*, said:—"It seems to me, therefore, that the effect of those decisions is this, that where a compulsory winding-up supervenes, a line is to be drawn at the date of the winding-up, and that thereupon, as it is put by Lord Watson, the liability of the shareholder is put an end to so far as regards all liability beyond the amount which he was bound to contribute up to that date." . . . . "Now, what is the position of the unadvanced shareholder? I take it to be exactly that which is laid down by Lord Watson. He is free from all liability beyond the amount which he was bound to contribute up to that date."

(*o*) 53 & 54 Vict. c. 39, s. 1, sub-s. 2.

(*p*) 58 L. J. Ch. 771; 5 Times L. R. 516. There was a provision in the rules of this society to the effect that every member who obtained an advance should continue to hold at least one unadvanced share in the society; such a provision is very unusual.

Outside creditors.

Where, however, there are outside creditors whose claims have to be met, both advanced and unadvanced members of unincorporated societies have been held to be contributories with unlimited liability (*q*).

Preference shares.

And they may also, under certain circumstances, be liable to make good the amount owing to preference shareholders. In a very recent case, Chitty, J., held on the construction of the rules that preference shareholders were not liable to contribute to expenses or losses, but were entitled to be paid in full, the losses being borne by the advanced and unadvanced members in fair proportions (*r*). And in *Re Guardian Permanent Benefit Building Society, Scott's Case* (*s*), it was held that a rule giving the directors of an unincorporated society power to issue deposit or paid-up shares at a fixed rate of interest, with a right to withdraw the money in preference to the ordinary unadvanced members, was valid, and that the holders as a class were entitled in a winding-up to be paid in priority to the unadvanced members.

Past investing members.

An investing member who has withdrawn, and been paid the amount of his shares, before the commencement of the winding-up, is certainly not liable to be placed on the list of contributories, whether the society is incorporated (*t*) or unincorporated (*u*).

Incorporated societies.

In an incorporated society the liability of an investing or

(*q*) *Re Doncaster Permanent Building Society*, 3 Eq. 158; 15 W. R. 102; 15 L. T. 270; 31 J. P. 210; *Re Professional, Commercial, and Industrial Benefit Building Society*, 6 Ch. 856; 19 W. R. 1153; 25 L. T. 397. See also, as to the liability of members of an unincorporated society, Lord Blackburn's judgment in *Murray* v. *Scott*, 9 App. Cas. p. 545; 53 L. J. Ch. 745; 33 W. R. 173; 51 L. T. 462.

(*r*) *Re Reliance Permanent Benefit Building Society*, 8 Times L. R. 525; W. N. (1892) 77.

(*s*) 23 Ch. D. 440, 453; 52 L. J. Ch. 857; 32 W. R. 73; 48 L. T. 134; affirmed on appeal, *nom. Murray* v. *Scott*, 9 App. Cas. 519; 53 L. J. Ch. 745; 33 W. R. 173; 51 L. T. 462.

(*t*) *Re Sheffield and South Yorkshire Building Society*, 22 Q. B. D. 470; 58 L. J. Q. B. 265; 60 L. T. 186; 5 Times L. R. 192; 53 J. P. 375.

(*u*) *Re West Riding of Yorkshire Permanent Benefit Building Society, Ex parte Charnock*, 45 Ch. D. 463; 59 L. J. Ch. 823; 39 W. R. 74; 63 L. T. 483.

unadvanced member is expressly limited to "the amount actually paid or in arrear" on his shares: see sect. 14 of the Act of 1874, *ante*, p. 124, and the cases there cited.

Liability of advanced members.

3. The leading authority as to the position of advanced members in the event of a winding-up is *Brownlie* v. *Russell* (*x*), where the society was incorporated. In that case an advanced member claimed to redeem on payment of the difference between his loan and the total amount of the instalments which he had already repaid. The liquidators denied his right to redeem after the winding-up had commenced unless he paid up the whole loan, leaving the instalments to be refunded according to the result of the liquidation. The House of Lords held that the advance had been extinguished *pro tanto* by the total amount of the instalments paid, and that after the date of the winding-up order, although an advanced member could no longer take advantage of a rule enabling him to withdraw, he was nevertheless entitled to redeem on payment of the difference between the advance and the instalments, with interest added thereon, as against excess of interest which he had been charged, and on payment of such difference with interest was entitled to be relieved of all further liability as a contributory or otherwise.

Brownlie v. *Russell.*

Tosh v. *North British Building Society.*

A similar question arose in *Tosh* v. *North British Building Society* (*y*), where the society was unincorporated. It was held, reversing the decision below (*z*), and following *Brownlie* v. *Russell*, that the advanced members were entitled to redeem on the same terms as if no winding-up had occurred, and were not bound to remain members and bear a share of the losses sustained by the society. It was attempted to distinguish *Brownlie* v. *Russell* on the

(*x*) 8 App. Cas. 235; 48 L. T. 881; 47 J. P. 757; 10 R. (H. L.) 19; 20 Sc. L. R. 481; affirming the decision below, 8 R. 917; 18 Sc. L. R. 661.

(*y*) 11 App. Cas. 489; 35 W. R. 413; 14 R. 6; 24 Sc. L. R. 128.

(*z*) 12 R. 1271; 22 Sc. L. R. 833.

ground that in that case the society was incorporated; and this distinction no doubt did exist, but the House considered that though sect. 14 of the Act of 1874 had of course been noticed in *Brownlie's Case*, no substantial reliance had in fact been placed on it, and the decision would have been precisely the same if the society had been registered only under the Act of 1836.

Sharing profits.

In both these cases, it is to be observed, the advanced members were entitled under the rules to share profits, but it was held that this alone would not render them liable to share losses. The point is put by Lord Bramwell with the utmost plainness: "Now that I understand to be the contention of the appellants. What is there in the rules to justify it? There is not one word in the rules about losses being borne either by the advanced or unadvanced members; and the only reason that can be given why the advanced members or anybody else should bear the losses is that they were to have profits if there were any. So they will undoubtedly; but it does not follow from that that they are to bear losses. It might have been a reasonable stipulation to put in if they had thought of it; but either they did not think of it, or, if they did think of it, they did not consider that it was reasonable to put it in, and we cannot put it in upon some speculation that if they had thought of it they would have put it in" (*a*).

Outside creditors.

It should further be noticed that neither in *Tosh's Case* nor in *Brownlie* v. *Russell*, were there any outside creditors—a fact to which Lord Blackburn draws attention in his judgment in the former case (*b*).

Re Middlesbrough, &c., Society.

In *Re Middlesbrough, Redcar, &c. Building Society* (*c*), another attempt was made to put advanced members on the list of contributories, but the learned judge, Stirling, J.,

(*a*) *Brownlie* v. *Russell*, 8 App. Cas. p. 260.
(*b*) 11 App. Cas. p. 505.
(*c*) 58 L. J. Ch. 771; 5 Times L. R. 516.

held that they were under no such liability, and were entitled to redeem on the terms expressed in the rules as if no winding-up order had been made; and to the same effect is *Re Britannia Permanent Benefit Building Society* (*d*). There the mortgage given by an advanced member was expressed to secure payment of "all share or subscription money, expenses, fines, forfeitures, and moneys whatsoever to be paid by the mortgagor pursuant to the rules of the said society in respect of the shares so received by him in advance as aforesaid, or otherwise in respect of his being a member of the said society," and the learned judge, Kekewich, J., held that the advanced shareholder was a mere debtor to the society, and not a shareholder liable as a contributory, and consequently that his executors could not be placed on the list.

Re Britannia Society.

In *Re Doncaster Permanent Building Society* (*e*) advanced members, by rule 28, were to be entitled to be released from their mortgages on payment of subscriptions for fourteen years, or when the amount so paid should equal the sums advanced, with the interest and other charges thereon, and they thereupon ceased to be members. But they might redeem by paying a fine of 10*s.* a share and the subscription for fourteen years in advance, less a certain discount, together with all fines and other charges due on the shares. It was held that members who redeemed under an order made in the winding-up were not liable to contribute to satisfy the claims of the unadvanced shareholders, because, although the redemption clause did not so provide in terms, they had practically ceased to be members.

Re Doncaster Permanent Building Society.

Another case which occurred in the winding-up of the North British Society raised a somewhat different point. A subscriber for forty 25*l.* shares, representing a nominal

Selkirk v. *Taylor.*

(*d*) 65 L. T. 196; W. N. (1891) 123.

(*e*) 3 Eq. 158; 15 W. R. 102; 15 L. T. 270; 31 J. P. 310.

capital of 1,000*l.*, had obtained an advance of 500*l.* After the decision in *Tosh's Case*, he maintained that the advance ought to be treated as having been made in respect of all his shares, and consequently that as he held no unadvanced shares he was under no liability for losses. This ingenious contention, however, was rejected, the Court of Session holding that an advance being payment of a share by anticipation, it must be either of 25*l.* (the amount of a share) or of some multiple of that sum; that the advance of 500*l.* was therefore payment by anticipation of a corresponding number of shares, viz., twenty; and that the liquidator was right in treating the holding as consisting of twenty advanced shares and twenty unadvanced (*f*).

Liability of advanced member on redemption.

Buckle v. *Lordonny*.

The question of an advanced member's liability to bear a share of the losses may, of course, arise otherwise than in a liquidation; thus, in *Buckle* v. *Lordonny* (*g*), it arose in an action to redeem. In that case there were no outside creditors, and the losses, a share of which it was sought to throw on the plaintiff, were all sustained after the date of his advance. In the absence of any provision to that effect in the rules, Mr. Justice Kay held that advanced members were not liable to share the losses, and that the plaintiff, who had completed his repayments, was entitled to the usual statutory receipt.

Advanced members liable for losses by special contract.

Advanced members will, however, be liable to share losses if there is a special contract to that effect. In a late case an unincorporated society was being wound up by the Court. There was enough to pay outside creditors, but not enough to pay the investing members the full value of their shares, and the question arose whether the

(*f*) *North British Building Society* v. *M'Lellan*, 14 R. 827; *S. C. nom. Selkirk* v. *Taylor*, 24 Sc. L. R. 600.

(*g*) 56 L. J. Ch. 437; 35 W. R. 360; 56 L. T. 273; 3 Times L. R. 69; 51 J. P. 422; and see *Durham and Northumberland Working Men's Permanent Building Society* v. *Davidson*, 8 Times L. R. 428, cited *post*, p. 228.

advanced members were liable to contribute to the loss which must otherwise fall on the investing members alone. The material rules were as follows:—

RULE XXXIX.—*Surplus Profits.*

1. "That the present and future surplus arising from the transactions of the society, after providing for all liabilities, shall from time to time be appropriated equitably and equally between the investing and borrowing members by way of bonus, in proportion to the number of shares held by each member, and the period subscribed for to the society."

3. "No bonus to be paid until the shares be realized or withdrawn."

RULE XL.—*Deficiency of Income.*

1. "The directors shall, every three years at least, take into consideration the general affairs and the gross receipts and expenditure of the society at special meetings of their body, to be called for that purpose by the manager, and if they shall determine at such special meeting that there is a deficiency of income by which the society may be prevented from meeting its anticipated expenditure and liabilities, the amount of such deficiency shall be equitably and equally apportioned by the directors between the investing and borrowing members, and shall be paid by them severally and respectively forthwith, or by such monthly or quarterly instalments as the directors shall determine, and if the same shall not be paid accordingly, every member who makes default shall pay the same fines as for an equal amount of subscriptions or repayments in arrear as the case may be."

The learned judge, Chitty, J., considered that the "liabilities" to be provided for under these rules included sums payable to investing members, and that "income" in rule 40 was not used in contradistinction to "capital," but

meant everything that *came in*, whether repayments by advanced members, moneys borrowed from outside creditors, or anything else. He accordingly held that the advanced members were liable to contribute to losses together with the investing members, and that the fact that the directors had not apportioned or determined the loss made no difference, as the Court could apportion the liability in the winding-up. Advanced members were consequently not entitled to redeem except on terms of paying what might be due from them on this account (*h*).

Past advanced members.

But in the same winding-up, it was held that advanced members who had re-paid their advances and received back their deeds with the usual statutory receipt before the commencement of the winding-up, were entirely discharged and could not be placed on the list of contributories (*i*).

Liability to preference shareholders.

As to the liability of advanced members to contribute to the payment of what is owing to preference shareholders: see *Re Reliance Permanent Benefit Building Society* (*k*), cited *ante*, p. 222.

Durham, &c., Society v. *Davidson.*

In a recent and very instructive case, the mortgage contained a covenant by the advanced member to pay to the society "all subscriptions, fines, and other moneys" which according to the rules of the society, should from time to time be payable by him. Rule 12 was as follows:—"The directors shall be empowered to deduct annually from the amount standing to the credit of each member, whether unadvanced or advanced, such sum as may be necessary to meet the current expenses and contingencies of the society; and, in case any member withdraws from the society during

(*h*) *Re West Riding of Yorkshire Permanent Benefit Building Society*, 43 Ch. D. 407; 59 L. J. Ch. 197; 38 W. R. 376; 62 L. T. 486; 6 Times L. R. 160; and see also *Re Albion Mutual Permanent Benefit Building Society*, 43 Ch. D. 410, n., where the rule was very similar.

(*i*) *Re West Riding of Yorkshire Permanent Benefit Building Society, Ex parte Pullman*, 45 Ch. D. 463; 59 L. J. Ch. 823; 39 W. R. 74; 63 L. T. 483.

(*k*) 8 Times L. R. 525; W. N. (1892) 77.

the course of the year, such withdrawing member shall have deducted from the amount payable to him, such sum as shall be considered his just proportion thereof. The amount of such deduction to be calculated *pro ratâ* according to the shares or interest of the member in the society; provided, nevertheless, that, if the profits of the society shall be sufficient to meet all expenses and contingencies (determinable by the directors), then no deduction as aforesaid shall be made. All fines, contributions, and fees whatsoever mentioned in the rules (except remuneration fees payable to the officers) shall be applicable to pay expenses and contingencies." The defendant became a member in May, 1888. At that date the secretary had been for some time misappropriating moneys of the society, but his defalcations had not been discovered. In August, 1888, they were discovered, and he absconded. The current year of the society ended on October 8th, 1888. The question arose, what (if anything) the defendant was liable to pay to the society as his proportion of the loss resulting from the defalcations of the secretary. He had claimed to redeem his mortgage, but the directors had refused to allow him to do so unless he paid his proportion of the loss, to meet which they had deducted 27 per cent. from the amount standing to the credit of each unadvanced member, and added 27 per cent. to the amount payable by each advanced member; and they accordingly claimed a sum of 118*l.* 2*s.* 2*d.* as due from the defendant under the mortgage deed and the rules on this account. Mr. Justice Day held that the loss resulting from the defalcations, although to a great extent it had taken place before the defendant became a member, was a "contingency" within the meaning of rule 12; that it arose when the defalcations were discovered; and that the defendant was bound to go on paying his subscriptions and fines until there should be standing to his credit an amount sufficient to discharge his share of the loss. The case then went to the Court of Appeal,

and after it had been twice argued and judgment reserved the decision of the learned judge was reversed. "The first question," said Lord Herschell, "which arises is whether the loss due to the secretary's misappropriation is a contingency within the meaning of this rule, and the next, if it be so, what power the rule confers upon the directors in respect of it. It is not necessary to determine whether it is a contingency within the rule, because, even assuming that it is, I think the defendant is entitled to the relief he claims by his counterclaim, though my impression is that the learned judge rightly held that, where an unexpected loss or liability is ascertained in the course of any year, it is a contingency which the directors are empowered to deal with under the rule. But it is, to my mind, perfectly clear that in the case of a contingency within the rule, the only power which the directors possess is to make, for the purpose of meeting it, a reduction from the amount standing to the credit of members. There is no power to place any sum to their debit, or to create any debt or liability. What is meant by the amount 'standing to the credit of each member, whether advanced or unadvanced,' is made clear by the provisions contained in the rules. In the case of unadvanced shares, it consists of subscriptions and interest; in the case of advanced shares (by rule 26) of the amount of payments made by the member, less interest on the mortgage debt at the rate of 6 per cent. per annum. It is with these sums, and these alone, that the directors have power to deal by way of deduction from them. At the period with which we are dealing, there appear to have been held by the members 448 unadvanced shares, with a balance standing to their credit of 1,183*l.* 0*s.* 11*d.*, and $127\frac{1}{3}$ advanced shares, the amount standing to the credit of members in respect thereof being 154*l.* 15*s.* 9*d.* The 12th rule prescribes that the amount of deduction is to be calculated *pro ratâ*, according to the shares or interest of members in the society. From the amount standing to

the credit of members whose shares were unadvanced, the directors deducted 27 per cent.—a proceeding, I think, in complete conformity with the rule; but they dealt with the members whose shares were advanced in a manner entirely different. They disregarded altogether the amount standing to their credit, and added 27 per cent. to the amount which they owed to the society in respect of their advance. I am unable to see any justification for this. They could not, in the case of members whose shares were advanced, any more than in that of the unadvanced, do anything beyond making a deduction from sums standing to their credit; and if they made a deduction which wiped out the whole of the credit, it was the utmost they had power to do. I cannot see on what principle it was thought right that the 127 advanced shares should bear something like three-fourths of the loss, whilst the residue only was to fall on the 448 unadvanced shares. The rule does not require that the reduction should be calculated *pro ratâ* upon the shares held, the words being 'share or interest'; and I see no reason to differ from the directors in thinking that the proper mode of making the deduction, was to make it proportionate to the amount standing to the credit of each member. The true measure of a member's interest in the society is the amount standing to his credit. The member who has paid his share almost in full, and one who has only paid a single subscription, cannot be said to have an equal interest in the society. The share of the latter represents little more than the obligation (unless he withdraws) to pay future subscriptions. But if the course adopted was proper in the case of unadvanced shares, it was, in my opinion, equally so in the case of the advanced. The interest of the latter in the society was certainly not measured by the debts they owed it. It was, I think, therefore open to the directors to make a deduction which would have the effect of wiping out the amount standing to the credit of all the members,

whether advanced or unadvanced; but beyond this they could not go. There was enough standing to the credit of the members to meet, within a few pounds, the loss sustained by the society. The rule with which we are dealing requires the directors to deduct annually the sum necessary to meet current expenses and contingencies, but it further provides that no deduction is to be made if the profits of the society are sufficient to meet all expenses and contingencies; and, further, that all fines, contributions, and fees mentioned in the rules should be applied to pay expenses and contingencies. The question whether, where a deduction cannot be made in any given year sufficient to meet a contingency, deduction may be made in respect of the balance in the following year, is one of some difficulty, but a determination of it is not necessary to the decision of the present case. Even if a further deduction had been made in the subsequent year of the amount necessary to provide for the balance, the amount tendered by the counterclaim would still be sufficient. For the reasons I have given, I think that even, assuming the case to be within the rule, the directors cannot make good the position taken up by them, that the defendant can only redeem on payment of the amount which they placed to his debit. The 28th rule enables a member desirous of having his property discharged from the mortgage to the society, before the expiration of the full term thereof, to be allowed to do so 'on payment of all repayments, subscriptions, and fines due in respect thereof up to the time of such redemption, and of all other contributions and payments required by the rules.' Under the terms of this rule the member may insist on redeeming his mortgage on paying the amount due after allowing for the sum standing to his credit, any deduction properly made by the directors under rule 12 being, of course, taken into account in ascertaining what sum does stand to his credit. The defendant, by the counterclaim, offered to pay 436*l.* 17*s.* 4*d.*, and claimed to redeem

on these terms, and I think he was entitled to do so. So far, I have dealt with the case on the basis that rule 12 applies. If it does not, the right of the defendant to redeem on the terms he claims is still more clear. I think that the judgment on the counterclaim must be reversed and judgment entered thereon for the defendant." The other members of the Court (Lindley and Kay, L. JJ.) concurred in this judgment, but Lord Justice Kay considered that the terms of rule 12 were not sufficiently explicit to render members liable, even to the extent of moneys standing to their credit, to make good losses incurred by the society (*l*).

Payment by instalments after winding-up order.

Whether, notwithstanding a winding-up order, an advanced member is still entitled to go on paying by instalments, or whether the liquidator can compel him to pay up the whole balance at once, seems to depend on the terms upon which the advance was made. In *Scottish Property Investment Company Building Society* v. *Boyd* (*m*), it was held, there being no outside creditors unpaid, that an advanced member could not be compelled, on the society going into liquidation, to repay his loan otherwise than by instalments as stipulated in his bond. The liquidator contended that the effect of the winding-up was to compel the advanced member to pay the whole balance remaining due from him at once, and cited *Brownlie* v. *Russell* (*n*) in support of this view. The Lord Justice Clerk in the course of his judgment (12 R., p. 137) said:—"I am of opinion that there is neither principle nor authority which can maintain such a demand; that the company, although in liquidation, continues to subsist for the purpose of winding-up, for the realizing of its funds, and fulfilment of its obligations, and that as it was effectually bound to accept payment of the alleged debt by the stipulated in-

(*l*) *Durham and Northumberland Working Men's Permanent Building Society* v. *Davidson*, 8 Times L. R. 428.

(*m*) 12 R. 127; 22 Sc. L. R. 43. See also *Cordingley* v. *Alliance Society*, W. N. (1887) 220, a case of a voluntary winding-up.

(*n*) 8 App. Cas. 235; 48 L. T. 881; 47 J. P. 757; 10 R. (H. L.) 19; 20 Sc. L. R. 481.

stalments, the liquidator is not entitled to evade these stipulations but is bound to fulfil them. It does not seem to me of much moment to inquire whether this building society comes strictly under the category of a trading partnership or not. It is certainly primarily regulated by the Acts of Parliament which have been passed in regard to such associations, and by the rules of the special association. Subject, however, to these, I should have thought that it belonged to the category of society or partnership as understood in our law. But such a society must, at all events, continue to exist for the purpose of winding-up, and it must fulfil its obligations in the terms and on the conditions to which its contract binds it, whatever may be the legal character of its constitution. There is no provision in any Act of Parliament, or in the rules of this society, which justifies the violation of deliberate contract, or which empowers the company or the shareholders to terminate them by going into liquidation. This may, and no doubt does, put an end to future transactions, but it cannot affect the rights of creditors constituted by prior obligations. Neither do I think it of moment to consider minutely the precise position of an advanced shareholder under this contract. My own opinion is that under such a contract he is more of a debtor than of a shareholder, and that there is nothing in the fact of his being on the roll of shareholders which in any way limits his right to receive fulfilment of the obligations of the company in terms of their undertaking; neither does it seem necessarily to imply any future or contingent obligation after the contract of repayment has been fulfilled. Much, of course, will depend on the particular rules of any given society, but I know of no authority for holding it to be a general rule that the liquidation of a building society of this kind alters the terms of contracts made with advanced shareholders, or renders it illegal to continue to receive payments on such debts by instalments in terms of the obligation."

On the other hand, where the borrowing members had obtained loans on bonds and dispositions in security in ordinary form with an obligation of repayment at the first term of Whit Sunday or Martinmas after the loan was granted, although the rules of the society provided that the advance should be repaid by instalments only, the Court held, following the case of the *Greenock Property Investment Company* (*o*), that the liquidator was entitled to enforce payment of the amount advanced in terms of the bond, and that the members could not claim to pay off their advances by instalments merely on their shares as they would have done had the society continued its business (*p*). It was considered that *Boyd's Case* did not apply, because there the borrowing members had not granted any obligation for repayment of the advance except by way of instalments payable at regular stated intervals over a period of time. *Finlay's Case* was afterwards taken to the House of Lords, *nom. Tosh* v. *North British Building Society* (*q*), but the appeal on this point was abandoned. In this case, too, there were no outside creditors.

Liability of advanced member under rule adopted since his advance.

As to how far an advanced member is liable to share in losses when the rule creating the liability was only adopted subsequently to the date of his advance, see *ante*, p. 156, and the cases there cited.

Mortgage executed in ignorance of its contents.

In *Empson's Case* (*r*), the surveyor of a building society, at the request of the directors, agreed to purchase land of the society on the understanding that he could immediately mortgage it to the trustees for the full amount of the purchase-money. The land was conveyed to him, and he executed, without reading it or knowing its contents, a deed prepared by the solicitor of the society mortgaging the land to the trustees, which the mortgagor believed to be

(*o*) 11 R. 976; 21 Sc. L. R. 701.

(*p*) *Trustees of the North British Building Society, Finlay's Case*, 12 R. 1271; 22 Sc. L. R. 833.

(*q*) 11 App. Cas. p. 489; 35 W. R. 413; 14 R. 6; 24 Sc. L. R. 128.

(*r*) 10 Eq. 597; 18 W. R. 765; 22 L. T. 855.

an ordinary mortgage for securing the purchase-money and interest. The deed in fact recited that he was a member of the society, and had subscribed for a certain number of shares, and that the purchase-money had been advanced to him in respect of his shares, and it contained a covenant by him to make payments on the shares according to the rules of the society. He never applied for shares, and did not comply with any of the conditions prescribed by the rules for the admission of members, his name was not entered in the register of members, and the directors never called upon him to make any payments as a member. Two years after the date of the mortgage the society was ordered to be wound up. Under these circumstances it was held by Malins, V.-C., that the mortgage deed did not represent the real transaction, and that the mortgagor could not be made a contributory.

Priority of withdrawn and realised shares.

4. It is well settled that members whose notices to withdraw have expired before the commencement of the winding-up, are, as between themselves and the other members, substantially in the position of creditors, and will be entitled, notwithstanding the winding-up, to the benefit of any priority of payment given them by the rules; but they cannot, of course, compete with creditors properly so called.

Effect of a winding-up order on the right to withdraw.

The effect of a winding-up order on the right to withdraw was considered in *Brownlie* v. *Russell* (*s*). In that case Lord Selborne in the course of his judgment said:—"I cannot but think that the true effect of the winding-up order is that which was put to your Lordships by Mr. Davey in his able argument. I think that it prevents the exercise of the option of retiring or withdrawing which was given to all the members, to the unadvanced members under the 9th rule and to the advanced members under the 12th, as to which I hold that the

(*s*) 8 App. Cas. 235; 48 L. T. 881; 10 R. (H. L.) 19; 20 Sc. L. R. 481; 47 J. P. 757.

rules contemplate a going concern. That is consistent with the opinion expressed by Vice-Chancellor Wood in the case before him, who spoke of the winding-up order as substantially putting a stop to the whole thing. It takes away the option which otherwise, if the concern had been a going one, would have belonged to each member—it, by a *vis major*, as the Vice-Chancellor said, puts a close to the whole concern—it terminates, at that date, the account of each shareholder—it cuts off all chance of profit which, if the thing had gone on, both classes of members might have had under the 5th rule. It is equivalent, not to an optional withdrawal or retirement by individual members, but to a compulsory withdrawal by the operation of the winding-up order as against them all."

Walton v. *Edge*.

In *Walton* v. *Edge* (*t*), the rules allowed any investing member to withdraw, "provided the funds permit," upon giving notice, and declared that "no further liabilities shall be incurred by the society till such member has been repaid." The society was ordered to be wound up, and the assets were insufficient to pay everybody. It was held that those investing members who had given notice of withdrawal, and whose notices had expired before the winding-up began, were entitled to be paid out of the assets (after payment of the outside creditors), in priority to those members who had not given notice of withdrawal, notwithstanding the fact that between the giving of the notices and the winding-up there never were any funds available for their payment, and that some of the notices accepted by the directors were not in the form prescribed by the rules. "Then what is there in this contract to say that, if the funds do permit the payment to be made, though it was not possible before the winding-up, yet if it becomes possible after that time, it shall not be done?

(*t*) 10 App. Cas. 33; 54 L. J. Ch. 362; 33 W. R. 417; 52 L. T. 666; 1 Times L. R. 96; 49 J. P. 468; affirming *S. C.* below, *nom.* *Re Blackburn and District Benefit Building Society*, 24 Ch. D. 421; 52 L. J. Ch. 894; 32 W. R. 159; 49 L. T. 730.

Certainly there is nothing on the face of the contract to that effect; there is nothing to say that in any case when there are funds with or without winding-up, the non-withdrawing members are to come into competition with the right thus given to the withdrawing members. Is there anything to that effect in the Act under which building societies are liable to be wound up? Nothing whatever. The particular terms of that Act have not been referred to, but they are familiar to your lordships. It provides that when there is a winding-up the transactions of the society are to stop; there can be no new contracts entered into; there can be no change of the position in which the parties stand at that time; no new notice of withdrawal can be given, or anything of that character; and an official liquidator is appointed, who is to collect the assets of the society and to administer them in a due course of administration, paying creditors first and the costs of the winding-up, and then if there is a surplus that surplus is to be applied according to the rights of the members *inter se*. If the members had contracted with each other before the winding-up that in an event which had happened before the winding-up a particular member should have a right to be paid off his share or a sum which he desired to withdraw, as soon as the funds should permit, then the moment the funds of the society are cleared from claims prior to his right that right must take effect in a due course of administration under the winding-up, just as it would have done before. In adjusting the rights of the members *inter se*, without going into any technical questions as to the use of the word 'creditor,' those members are to be preferred who under the contract have a right to a preferable payment out of the free assets, the free funds, when they exist" (*u*). This decision was followed by the Court of Appeal in *Re Alliance Society* (*x*), by Mr. Justice Kay in

(*u*) *Per* the Earl of Selborne, L. C. 10 App. Cas. 37.

(*x*) 28 Ch. D. 559; 54 L. J. Ch. 540; 52 L. T. 695.

Re The Middlesbrough Building Society (*y*), and by the Court of Session in Scotland in *Trustees of the North British Building Society* (*z*).

Re Mutual Society.

In *Re Mutual Society* (*a*), the late Master of the Rolls (Sir George Jessel) on the rules of the particular society before him came to a different conclusion, but the case is only briefly reported, and lays down no general principle. All that it decided was that where there was a special fund pointed out for payment of withdrawing members—a fund that did not and could not exist after the winding-up—the members who were only to be paid out of that fund could not be paid when the fund did not exist (*b*).

Realised or completed shares.

Again, the holders of realized or completed shares will, if the rules so provide, be entitled to a priority similar to that enjoyed by members who have given notice of withdrawal. In *Re Norwich and Norfolk, &c. Building Society, Ex parte Rackham* (*c*), "realized" members who had by their subscriptions, with interest and bonuses, made up the full amount of their shares, were entitled to payment, or certificates for payment, in rotation, of such amount; and "withdrawal" members who had not made up the full amount of their shares, but had given notice to withdraw, were entitled to like payment or certificates for the amount of their subscriptions, with interest. The Court of Appeal held, affirming the decision of Hall, V.-C., that these two classes were entitled to be paid in full in priority to the investing members who had not made up their shares and had not given notice of withdrawal.

Trustees of the North British Building Society.

In *Trustees of the North British Building Society* (*d*), any member holding any unadvanced share which by the subscriptions and the profits thereon had accumulated to 25*l.*,

(*y*) 53 L. T. 203; 20 L. J. N. C. 142.
(*z*) 12 R. 1271; 22 Sc. L. R. 833.
(*a*) 24 Ch. D. 425, n.
(*b*) *Per* Bowen, L. J., 24 Ch. D. p. 437.
(*c*) 45 L. J. Ch. 785; W. N. (1876) 186, 230.
(*d*) 12 R. 1271; 22 Sc. L. R. 833.

the amount of the share, was entitled to receive that amount with interest from the date of completion—his connection with the society thereupon ceasing—but the directors were not to be bound to pay him out until three months after the payment fell due, and then only along with withdrawals (who were also entitled to priority) in their order and as the funds permitted. It was held that the owners of completed shares were entitled to priority along with the owners of shares withdrawn.

Blair v. *Broadfoot's Trustees and Lyle.*

In another case (*e*) the rules provided that when the profits with the instalments paid amounted to 25*l.* per share members should be paid out, provided that where members were paid out during the currency of the financial year they should only be entitled, in lieu of profits, to interest from the date of the immediately preceding balance on the sum standing at their credit at such rate as the directors might from time to time fix, and such interest might, in the option of the directors, be dealt with as profits in the maturing of shares. The society stopped business and suspended payment on December 24th, 1883, and a winding-up order was subsequently made. It was held that a member whose shares, with the addition of interest at the rate fixed by the directors for the year, had matured before December 24th, 1883, was entitled to priority.

Where shares have matured in accordance with the rules, and are marked in the society's books as fully paid up, the mere fact that certain trifling payments are still due from the member in respect of them will not prevent the shares being treated as realized (*f*).

Conversion of realised shareholder into creditor.

As to the conversion of a realized shareholder into a depositor or creditor, see *Re Sheffield Permanent Building Society*, *Crookes's* and *Brailsford's Cases* (*g*), where the

(*e*) *Blair* v. *Broadfoot's Trustees and Lyle*, 27 Sc. L. R. 859.

(*f*) *Trustees of North British Building Society*, 12 R. 1271; 22 Sc. L. R. 833.

(*g*) 5 Times L. R. 211.

Court held that though such a conversion was possible enough it had not under the circumstances been effected.

Effect of winding-up on current notices of withdrawal.

In most societies a certain length of notice is required on withdrawing, and only those notices which have actually expired before the commencement of the winding-up will confer priority. If a winding-up supervenes while the notice is running the effect is to annul the notice and the priority is lost (*h*); and, moreover, it has now been decided that if the society virtually admits that it is insolvent, this alone, though no winding-up order may yet have been made, will extinguish the right of withdrawal, so that no notices to withdraw can be given after that date, and no notices then current can become effective in the winding-up. It is not the order to wind up, but the state of things which to the knowledge of all concerned renders liquidation inevitable, that in such a case puts an end to the right to withdraw (*i*).

North British Case.

In *Trustees of The North British Building Society*, the directors, on May 13th, 1882, issued a circular to the members intimating that, looking to the state of the finances and to the fact that a number of members had given notice to withdraw, they had resolved to take steps "to put all the members on an equal footing." With this view they suggested that all members should give notice of withdrawal. After the issue of this circular, no business was done and no new members admitted. On the society afterwards going into liquidation, it was held that the liability of members to share losses must be calculated as at the date of the circular, and that notices of withdrawal subsequent thereto could not receive effect.

Sunderland Case.

The *Sunderland Case* was a remarkable one. There was

(*h*) *Selkirk* v. *Taylor*, 24 Sc. L. R. 600; S. C. *nom. North British Building Society* v. *M'Lellan*, 14 R. 827.

(*i*) *Trustees of the North British Building Society*, 12 R. 1271; 22 Sc. L. R. 833; *Re Sunderland 36th Universal Building Society*, 24 Q. B. D. 394; 59 L. J. Q. B. 217; 38 W. R. 509; 62 L. T. 293; 54 J. P. 613; 6 Times L. R. 199.

a series of ten terminating societies in Sunderland whose rules were practically identical, the rule as to withdrawal being as follows:—"On and after the expiration of the first twelve months any member may withdraw the subscription money which he may have contributed, with such an amount of interest as may be determined by the committee, such member to give notice of his intention to withdraw in writing to the secretary, and should more than one member give notice to withdraw at one time, the member so giving notice shall be paid in rotation, according to the priority of notice, provided that the said society shall not be required or obliged to make such payment as aforesaid until they have sufficient funds in hand for that purpose, and also to meet the then existing legal liabilities of the society."

The affairs of all the societies were under the direction of one secretary, and on his death in the summer of 1886 the books of the societies were placed in the hands of a firm of accountants, whose report showed that most of the societies, including the 32nd and the 36th, were insolvent. This report was submitted to an aggregate meeting of the shareholders of all the societies on February 14, 1887, and at this meeting a resolution was passed recommending the appointment of a general committee, consisting of the directors and two delegates from each society, to consider the affairs of all the societies. The 32nd society held a meeting on February 16th, and the 36th society on the following day, February 17th, at which they decided to appoint delegates and to send a copy of the report to each shareholder. After February 17th no business was transacted by the 36th society and none by the 32nd, except that between February 16th and May 3rd, 1887, the latter society received a few pounds in subscriptions and paid some interest to paid-up shareholders, and held meetings to discuss suggestions for altering the rules. On May 3rd the general committee sent a notice to each shareholder urging him to give immediate notice of with-

drawal. On June 17th resolutions were passed for voluntary winding-up, and on July 2nd a supervision order was made. Under these circumstances a Divisional Court (Lord Coleridge, C. J., and Mathew, J.) held that the rules only provided for withdrawal while the societies were or were believed to be solvent, and consequently, that two notices of immediate withdrawal given after February 17th, 1887, by members of the 36th society, and a notice given on October 8th, 1886, by a member of the 32nd to withdraw at the end of six months, conferred no priority in the winding-up. The Court gave leave to appeal, and notice of appeal was given accordingly, but the matter was afterwards compromised and the appeal abandoned.

Stewart's Case

In a case that came before the Court of Session in Scotland, the 71st rule provided that the books of the society should be balanced and the profits ascertained as on February 1st in each year, in such way as the directors should think proper. The 75th rule provided that "any member holding unadvanced shares shall be entitled to withdraw from the society on application to the directors in writing, and shall be entitled to receive the amount standing at his credit in the books of the society in respect of his shares as at the immediately preceding annual balance, together with the amount of subscriptions paid by him thereafter." The 76th rule provided that "applications for withdrawal shall be considered and granted by the directors in the order of priority and the dates on which these applications shall have been received by the manager, and payment shall be made to such applicants so soon as the directors shall have sufficient funds at their disposal, and not otherwise." The annual balance sheet of the society for the year ending January 31st, 1881, was embodied in the directors' report, dated March 30th. It was disapproved by the society, and, after an investigation by the shareholders, an amended balance sheet was submitted by the directors, and approved by the society on July 28th. The amended balance sheet,

instead of showing an apparent profit as in the original balance sheet, showed a loss, attributable to over-valuation of the assets, estimated at 40 per cent. of the value of the shares of all unadvanced members who had not given notice of withdrawal previous to February 1st, and stated that the deficiency must be written off these shares. In November the society went into liquidation. Certain unadvanced members, who had given notice of withdrawal on March 3rd, objected to the writing off of 40 per cent. from the value of their shares as they stood in the books of the society on February 1st. The Court held that the balance sheet approved on July 28th showed the balance for the year ending January 31st, and that 40 per cent. had been rightly written off the value of the objectors' shares (*k*).

Terms of withdrawal cannot be altered by mere resolution of society.

So long, however, as the society is a solvent and going concern (although it may have sustained considerable losses), the contract under which a member is entitled to withdraw cannot be altered by a mere resolution of a majority, however large, of the other members; the only way in which the contract can be varied, is by a formal alteration of the rules. Thus, a resolution adopted by a majority of the members that, in consequence of losses sustained by the society, the sum of 7*s.* 6*d.* per pound should be deducted from all shareholders' accounts and placed to a suspense account, there being no winding-up and no rule as to the manner in which losses should be borne, was considered by the House of Lords to be plainly *ultra vires* and void, and a member who had given notice to withdraw some time after the date of the resolution, was held entitled to be paid the full amount standing to his credit in the books of the society without any such deduction (*l*).

(*k*) *Scottish Property Investment Company Building Society* v. *Stewart*, 12 R. 925; 22 Sc. L. R. 619.

(*l*) *Auld* v. *Glasgow Working Men's Building Society*, 12 App. Cas. 197; 35 W. R. 632; 56 L. T. 776; 14 R. 27; 3 Times L. R. 378; 24 Sc. L. R. 486, reversing the decision below, 12 R. 1320; 22 Sc. L. R. 883.

Cancellation of notice of withdrawal.

A member who has given notice of withdrawal may, of course, cancel his notice, and thus deprive himself of his claim to priority. Whether he has actually done so or not is sometimes a nice question of fact. An instructive case on this point is *Scottish Property Investment Co. Building Society* v. *Stewart* (*m*). In that case a shareholders' committee of investigation reported that, in consequence of the depreciation in the value of the society's property, and of the large proportion of unadvanced members who had given notice of withdrawal, two courses only remained open, either (1), immediate liquidation, or (2), to ask unadvanced members who had given notice of withdrawal to cancel their notices, but suggested "that should the second course be adopted, members should be asked to cancel their notices only on the express understanding that these cancellings are not to be used unless shareholders representing, at least, nine-tenths of the amount under notice of withdrawal, should cancel their notices within a limited time." A majority of the committee "strongly recommended" the second course. The society subsequently "gave a general approval of the committee's report," and gave instructions for circulars to be sent out inviting members to cancel their notices of withdrawal. The circulars, which were in the name of the directors and signed by the president, commenced thus:—"The directors beg to refer to their report, dated 30th March last, and to the reports by the committee appointed by the shareholders, which have been read at the recent meetings of the society." The circulars did not mention the condition that the concurrence of shareholders representing nine-tenths of the amount under notice of withdrawal should be necessary to a valid cancellation, and the form of cancellation sent with the circular was absolute in its terms. Nine-tenths did not cancel their notices of withdrawal. The Court of Session

(*m*) 12 R. 925; 22 Sc. L. R. 619.

held, that the cancellation by a member who had filled up and returned his notice was conditional upon nine-tenths of the members who had given notice of withdrawal likewise cancelling their notices, and as this condition had not been complied with, that the cancellation was inoperative.

Interest on shares withdrawn.

A question not unfrequently arises whether members who have given effective notices of withdrawal are entitled to interest on the sum withdrawn. Irrespective of statute, the general rule as to the payment of interest is that it ought only to be allowed in those cases where there is a contract for payment of money on a certain day, or where there is a contract express or implied to pay interest, or where it can be proved that interest has been actually made of the money (*n*). And in *Caledonian Rail. Co.* v. *Carmichael* (*o*), Lord Westbury lays it down that "interest can be demanded only in virtue of a contract expressed or implied, or by virtue of the principal sum of money having been wrongfully withheld, and not paid on the day when it ought to have been paid."

3 & 4 Will. 4, c. 42, s. 28.

By the Act 3 & 4 Will. 4, c. 42, s. 28, it is provided that upon all debts or sums certain, payable at a certain time or otherwise, the jury, on the trial of any issue or on any inquisition of damages, may, if they shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or, if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment; provided that interest shall be payable in all cases in which it is now payable by law (*p*).

(*n*) *Per* Lord Ellenborough, C. J., in *De Haviland* v. *Bowerbank*, 1 Camp. 50.

(*o*) L. R. 2 H. L. (Sc.) 56, 66.

(*p*) As to the construction and effect of this Act, see *Webster* v.

The following cases have been decided as to the payment of interest on sums withdrawn :—

Re Middlesbrough Building Society.

In *Re The Middlesbrough, &c. Building Society* (*q*), the rules provided that a withdrawing member should receive back his subscription money; that withdrawing members, whose shares were fully paid up, should receive 5 per cent. interest from the time such shares were so paid up or from the time the previous dividend was paid; and that if more than one should give notice to withdraw they should be paid according to priority of notice. It was held that the withdrawing members must be repaid the amount of their shares in priority to the other members, in rotation, according to the respective dates of their notices; and that members whose shares were fully paid up at the dates of their respective notices were entitled to interest on the amounts due to them, in the same order of priority, from the times when such shares were fully paid up, or from the times of the payment of the last dividend, until payment of the amounts due to them. See also *Re Reliance Permanent Benefit Building Society* (*r*); *Perratt* v. *London Scottish Building Society* (*s*).

Interest not allowed.

On the other hand, in *Re Blackburn and District Building Society* (*t*), the rules provided as follows :—"All subscriptions when they amount to 1*l.* upon investment accounts shall have interest at the rate of 5 per cent., when they amount to 5*l.* they shall bear interest at 6 per cent., provided the funds permit, to be added at the annual audit, but such interest shall not be paid until the shares are realized or withdrawn. The directors shall have power to alter the rate of interest to be divided. Any surplus

British Empire Mutual Life Assurance Co., 15 Ch. D. 169, 178; 28 W. R. 818; *Ward* v. *Eyre*, 15 Ch. D. 130; 49 L. J. Ch. 657; 28 W. R. 712; 43 L. T. 525; *L. C. & D. Rail. Co.* v. *S. E. Rail. Co.*, [1892] 1 Ch. 120; 61 L. J. Ch. 294; 40 W. R. 194; 65 L. T. 722.

(*q*) 53 L. T. 203; 20 L. J. N. C. 142.

(*r*) 8 Times L. R. 525; W. N. (1892) 77.

(*s*) 59 L. T. 31.

(*t*) W. N. (1886) 22.

profits which may arise shall be carried to a reserve fund, to meet future contingencies, and if not required for that purpose a portion thereof may from time to time be divided amongst the members in such manner as the consulting actuary shall determine"; and also "Any member of the society shall be allowed to withdraw, provided the funds permit . . . by giving one month's notice." On May 14th, 1881, a member gave notice to withdraw, and subsequently claimed interest at 5 per cent. per annum from June 14th, 1881, till payment. The Court of Appeal held, however, that he was not entitled to this, as the contract to pay interest was contingent on profits, and applied only while the society was a going concern, and no profits were made during the period in question; and further, that as no time for payment was fixed by the rule, there was not a "debt or sum certain payable by virtue of some written instrument at a certain time," so as to entitle him to interest under the statute.

In *Re Sunderland 36th Universal Building Society* (*t*), it was held that shareholders whose notices of withdrawal had matured before the societies were known to be insolvent, but who had not received the sums due to them, were not, in the absence of a determination by the committee of the amount due to them for interest, entitled to interest.

Compound interest.

Compound interest will be allowed if the rules so provide (*u*).

Depositors.

Depositors, not members of the society, of course obtain no priority in the winding-up by reason of their having given notice to withdraw; they and depositors who have not given such notice, and the other creditors of the society all stand on the same footing, and must all be paid *pari passu* (*x*).

(*t*) See *ante*, p. 242, where the rule is set out.

(*u*) *Re Doncaster Permanent Benefit Building and Investment Society*, 14 L. T. 13.

(*x*) *Re The Progressive Investment and Building Society, Limited, Ex parte Corbold*, 54 L. T. 45.

As to withdrawal generally, when there is no winding-up in question, see *ante*, p. 135.

Distribution of surplus assets.

5. After payment of debts and making due provision for priorities of withdrawn and realized shares, the surplus assets of the society must be divided among the members according to their rights and interests at the commencement of the winding-up, but subject of course to any special provisions in the rules.

Re Doncaster Permanent Building Society.

In *Re Doncaster Permanent Building Society* (*y*), the rules provided that the shares should be of the ultimate value of 120*l.* with a subscription of 10*s.* a month, that members should join in successive batches and that they should pay their subscriptions for fourteen years or till such time as each of the shares of the same date should have reached 120*l.* There was the usual rule as to withdrawal and it was also provided that the funds of the society should belong to the members in proportion to the time they had been subscribers, and that no dissolution should be completed until the close and maturity of all shares then in existence. The result of the liquidation was that after the advanced members had redeemed their securities and all debts to third parties had been paid, there remained a surplus sufficient to pay each unadvanced shareholder about 10*s.* in the pound on the value of his shares, according to the period of his subscription at the date of the winding-up order. It was held that no call could be made to equalize the value of the shares, and that the surplus was divisible among the unadvanced members *pro ratâ* according to their respective periods of subscription.

Re Middlesbrough, &c. Building Society.

A similar decision was given in the recent case of *Re The Middlesbrough, Redcar, and Saltburn, &c. Building Society* (*z*). There the rules provided that when it should be deemed advisable to bring the operations of the society to

(*y*) 4 Eq. 579; 36 L. J. Ch. 871.

(*z*) 58 L. J. Ch. 771; 5 Times L. R. 516.

a termination, a general meeting should be held which should have power to dissolve the society, and when all payments due to the society by members or any other person had been satisfied and the debts had been paid, the stock of the society should be divided among the members according to the respective number of unadvanced shares which each member might have standing at his credit in the books, and allowing the fair proportionate rate of profit upon each such share according to the duration of their payments to the society; but the rules contained no provision for the case of a compulsory winding-up. The learned judge, Stirling, J., held that the surplus assets must be distributed as nearly as might be according to the interests of the members of the society as they stood at the commencement of the winding-up, and that on those of the unadvanced members who were in arrear at the date of the winding-up order paying up or bringing into account what was owing from them at that date, they and the other unadvanced members would be entitled to the assets in proportion to their interest in the society, "that interest being dependent partly upon the period during which a person has been a member, and partly upon the amount of his shares and the extent of his contributions; that is to say, you give him a share in respect of the capital which he has paid up, and any profits which have been credited to him in respect of the capital so paid up" (*a*).

Vesting order under sect. 203.

The property of an unincorporated building society being vested in trustees, an application for a vesting order under sect. 203 of the Companies Act, 1862, generally becomes necessary in the course of the winding-up; see this section, *ante*, p. 213.

Application, how made.

The application, if subsequent to the winding-up order, is by motion in the name of the society (*b*).

(*a*) 58 L. J. Ch. p. 778.

(*b*) *Re Britannia Permanent Benefit Building Society*, 63 L. T. 304; W. N. (1890) 170.

Effect of vesting order.

The effect of an order under the section is to vest the property in the liquidator not in his personal capacity, but in his official capacity as official liquidator appointed by the Court to assist the Court in winding up the society. Consequently, where an action was brought against official liquidators in their personal capacity to recover arrears of a rent-charge, payable in respect of property of which they had taken possession in pursuance of a vesting order, it was held that the action was manifestly groundless and oppressive, and must be stayed accordingly (*c*).

Exercise by liquidators of powers of sale in mortgages to the society.

An important question recently arose under this section as to the exercise by liquidators of a power of sale contained in one of the society's mortgages. The mortgage was made to trustees in the usual way, and provided that, in case of default by the mortgagor, the property should be held upon trust that the trustees for the time being should, if and when required by the directors of the society, sell the property. By an order made in the winding-up, six of the directors were appointed liquidators, and it was ordered that all the acts required or authorized by the Act to be done by the official liquidators, might be done by any two of them. By another order it was ordered (following the terms of sect. 203) that all such property real and personal, including all interest claims and rights in, to, and out of property real and personal, and including things in action as might belong to or be vested in the society, or to or in any person or persons in trust for or on behalf of the society, should vest in the official liquidators, and (in pursuance of sect. 96) that they should be at liberty to exercise any of the powers conferred on them by sect. 95 of the Act without the sanction or

(*c*) *Graham* v. *Edge*, 20 Q. B. D. 538, 683; 57 L. J. Q. B. 406; 36 W. R. 529; 58 L. T. 860; 2 Meg. 1; and see *Re Blackburn and District Benefit Building Society, Ex parte Graham*, 42 Ch. D. 343; 59 L. J. Ch. 183; 38 W. R. 178; 61 L. T. 745; 2 Meg. 1; 5 Times L. R. 565, where an unsuccessful claim was made in the winding-up to recover these arrears.

intervention of the Court. Two of the six liquidators, without any further sanction of the Court, sold and conveyed the mortgaged property to a purchaser freed and discharged from the mortgage. The question arose whether, under these circumstances, the purchaser got a good title, and there was a considerable difference of judicial opinion. North, J., held that the trust for sale was properly exercised, and the legal estate effectually vested in the purchaser. On appeal, Lord Esher, M. R., and Cotton, L. J., held, Fry, L. J., *dubitante*, that the power of sale was validly exercised; while Cotton and Fry, L. JJ., Lord Esher, M. R., dissenting, held that the conveyance only passed the legal estate in two-sixths of the mortgaged property (*d*).

In a subsequent case, where a vesting order was applied for, the Court made the order, but the learned judge, Kay, J., held that the right to exercise the powers conferred by sect. 95 of the Companies Act, 1862, without the sanction or intervention of the Court, could not be allowed, and this part of the application was accordingly refused (*e*).

It has been held in Scotland in the winding-up of an incorporated society under a supervision order, that a liquidator appointed by the sheriff, on calling up a loan made by the society, has power by virtue of his appointment to reconvey the property held as security for the loan (*f*).

Security for costs.

Where the official liquidator took out a summons in the winding-up against the manager to make him liable for certain moneys of the society, and the manager applied for security for costs under sect. 69 of the Companies Act,

(*d*) *In re Ebsworth and Tidy's Contract*, 42 Ch. D. 23; 58 L. J. Ch. 665; 37 W. R. 657; 60 L. T. 841.

(*e*) *In re Britannia Permanent Benefit Building Society*, 63 L. T. 304; W. N. (1890) 170.

(*f*) *Scottish Property Investment Company Building Society* v. *Maclaren*, 19 Sc. L. R. 891.

1862, Bacon, V.-C., held that the Court had general jurisdiction to make the order asked for (*g*).

Notice of termination of winding-up to be given to the registrar.

Notice of the termination of the winding-up of an incorporated society, must be given in duplicate to the registrar within fourteen days from the termination of the winding-up in the form Q a. annexed to the Treasury Regulations, and the registrar will return one copy to the society, endorsed with the word "Registered," and duly authenticated (*h*).

Fee.

A fee of two shillings and sixpence is payable for registry of notice of the termination of a winding-up (*i*).

(*g*) *Re Seventh East Central Building Society*, 51 L. T. 109.

(*h*) Treasury Regulations, 1884, r. 17 a, Appendix B., *infra*.

(*i*) *Ibid.* r. 25.

Amended 57 & 58 Vict. c. 47. 1894.

APPENDIX A.

THE STATUTES RELATING TO INCORPORATED SOCIETIES.

THE BUILDING SOCIETIES ACT, 1874.

37 & 38 Vict. c. 42.

An Act to consolidate and amend the Laws relating to Building Societies. [30th July, 1874.]

Whereas it is expedient to consolidate and amend the law relating to building societies:

Be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Building Societies Act, 1874. Short title.

2. This Act shall commence and take effect on the second day of November one thousand eight hundred and seventy-four. Commencement of Act.

3. The registrar in this Act means (except where otherwise expressed) the registrar for the time being of friendly societies in England, Scotland, or Ireland, as the case may be, who shall, for the purposes of this Act, be the registrar of building societies. Definition of registrar.

APPENDIX A.

Definition of Court.

4. The Court in this Act means—

In England, the County Court of the district in which the chief office or place of meeting for the business of the society is situate;

In Scotland, the Sheriff's Court of the County in which such office or place of meeting is situate; and

In Ireland, the Civil Bill Court within the jurisdiction of which such office or place of meeting is situate.

Definition of terminating and permanent societies.

5. A terminating society in this Act means a society which by its rules is to terminate at a fixed date, or when a result specified in its rules is attained; a permanent society means a society which has not by its rules any such fixed date or specified result at which it shall terminate.

Application to Scotland.

6. In the application of this Act to Scotland the following words and expressions shall have the meanings hereby assigned to them; viz., "freehold estate" shall mean "heritable estate"; "mortgage" shall mean "conveyance or bond and disposition in security"; "letters of administration" shall mean "confirmation."

Repeal of 6 & 7 Will. 4, c. 32.

7. The Act of the sixth and seventh years of his late Majesty King William the Fourth, chapter thirty-two, intituled "An Act for the Regulation of Benefit Building Societies," is hereby repealed, but this repeal shall not affect any subsisting society certified under the said Act, until such society shall have obtained a certificate of incorporation under this Act; and this repeal shall not affect the past operation of the said Act, or the force or operation, validity or invalidity, of anything done or suffered, or any bond or security given, or any right, title, obligation, or liability accrued, or any proceedings taken thereunder, or under the rules of any society which has been certified thereunder: provided that with regard to such subsisting societies as may not obtain certificates of incorporation under this Act, all things required to be done by or sent

to the barrister or advocate and the clerk of the peace under the provisions of the said repealed Act shall be done by or sent to the registrar.

Societies under former Act to continue.

8. *Every society the rules of which have been certified under the said repealed Act shall be deemed to be a society under this Act, and may obtain a certificate of incorporation under this Act, and thereupon its rules shall, so far as the same are not contrary to any express provisions of this Act, continue in force until altered or rescinded as hereinafter mentioned* (*a*).

Incorporation of societies.

9. Every society now subsisting or hereafter established shall, upon receiving a certificate of incorporation under this Act, become a body corporate by its registered name, having perpetual succession, until terminated or dissolved in manner herein provided, and a common seal.

Enrolments to be sent to registrar.

10. On the commencement of this Act all transcripts of the rules of societies certified and enrolled under the said repealed Act which are now filed with the rolls of the sessions of the peace of any county, riding or division, city or borough, liberty or place, shall, on a proper application made for that purpose, be taken off the file and transmitted by the clerk of the peace to the registrar, to be by him kept and registered; and upon such registration every such subsisting society shall be entitled to a certificate of incorporation on application to the registrar.

Where enrolled transcript of rules not transmitted.

11. Any society now subsisting, the transcript of the rules of which is not transmitted to the registrar by the clerk of the peace, shall, upon furnishing the registrar with a copy of its rules, purporting to be certified or to be a true copy of rules certified by the barrister under the said repealed Act, authenticated by statutory declaration of the secretary or other officer of the society, as the registrar may require, be entitled to a certificate of incorpora-

(*a*) This section was repealed by the Building Societies Act, 1875, s. 1, *post*, p. 275.

APPENDIX A.

tion, and such copy of rules shall be by him kept and registered.

Certificate of incorporation how to be granted.

12. A certificate of incorporation under this Act shall not be granted to an existing society except upon application to the registrar made by authority of a general meeting of the society specially called for the purpose; and the registrar may require of the person making the application a statutory declaration that such authority was duly given.

Purpose for which societies may be established.

13. Any number of persons may establish a society under this Act, either terminating or permanent, for the purpose of raising by the subscriptions of the members a stock or fund for making advances to members out of the funds of the society upon security of freehold, copyhold, or leasehold estate, by way of mortgage; and any society under this Act shall, so far as is necessary for the said purpose, have power to hold land with the right of foreclosure, and may from time to time raise funds by the issue of shares of one or more denominations, either paid up in full or to be paid by periodical or other subscriptions, and with or without accumulating interest, and may repay such funds when no longer required for the purposes of the society: provided always, that any land to which any such society may become absolutely entitled by foreclosure, or by surrender, or other extinguishment of the right of redemption, shall as soon afterwards as may be conveniently practicable be sold or converted into money.

Limitation of liability of members.

14. The liability of any member of any society under this Act in respect of any share upon which no advance has been made shall be limited to the amount actually paid or in arrear on such share, and in respect of any share upon which an advance has been made shall be limited to the amount payable thereon under any mortgage or other security or under the rules of the society.

15. With respect to the borrowing of money by societies under this Act, the following provisions shall have effect: Power to borrow money.

(1.) Any society under this Act may receive deposits or loans, at interest, within the limits in this section provided, from the members or other persons, or from corporate bodies, joint stock companies, or from any terminating building society, to be applied to the purposes of the society:

(2.) In a permanent society the total amount so received on deposit or loan and not repaid by the society shall not at any time exceed two-thirds of the amount for the time being secured to the society by mortgages from its members:

(3.) In a terminating society the total amount so received and not repaid may either be a sum not exceeding such two-thirds as aforesaid, or a sum not exceeding twelve months subscriptions on the shares for the time being in force:

(4.) Any deposits with or loans to a society under this Act, made before the commencement of this Act in accordance with its certified rules, are hereby declared to be valid and binding on the society, but no further deposits or loans shall be received by such society, except within the limits provided by this section:

(5.) Every deposit book or acknowledgment or security of any kind given for a deposit or loan by a society shall have printed or written therein or thereon the whole of the fourteenth and fifteenth sections of the present Act.

16. The rules of every society hereafter established under this Act shall set forth— Matters to be set forth in the rules.

1. The name of the society, and chief office or place of meeting for the business of the society:

2. The manner in which the stock or funds of the

APPENDIX A.

society are to be raised, the terms upon which paid-up shares (if any) are to be issued and repaid, and whether preferential shares are to be issued, and, if so, within what limits, if any; and whether the society intends to avail itself of the borrowing powers contained in this Act, and, if so, within what limits, not exceeding the limits prescribed by this Act:

3. The purposes to which the funds of the society are to be applied, and the manner in which they are to be invested:
4. The terms upon which shares may be withdrawn, and upon which mortgages may be redeemed:
5. The manner of altering and rescinding the rules of the society, and of making additional rules:
6. The manner of appointing, remunerating, and removing the board of directors or committee of management, auditors, and other officers:
7. The manner of calling general and special meetings of the members:
8. Provision for an annual or more frequent audit of the accounts and inspection by the auditors of the mortgages and other securities belonging to the society:
9. Whether disputes between the society and any of its members, or any person claiming by or through any member, or under the rules, shall be settled by reference to the Court, or to the registrar, or to arbitration:
10. Provision for the device, custody, and use of the seal of the society, which shall in all cases bear the registered name thereof:
11. Provision for the custody of the mortgage deeds and other securities belonging to the society:
12. The powers and duties of the board of directors or committee of management and other officers:

13. The fines and forfeitures to be imposed on members of the society:

14. The manner in which the society, whether terminating or permanent, shall be terminated or dissolved.

Rules to be made.

17. The persons intending to establish a society under this Act shall transmit to the registrar two copies of the rules agreed upon by them for the government of the society, signed by three of such persons and by the intended secretary or other officer; and the registrar, if he find that the rules contain all the provisions set forth in section sixteen of this Act, and that they are in conformity with this Act, shall return one copy of the rules to the secretary or other officer of the society, with a certificate of incorporation, and shall retain and register the other copy; provided that no society shall be registered under this Act in a name identical with that in which a subsisting society is already registered, or so nearly resembling the same as to be calculated to deceive, unless such subsisting society is in course of being terminated or dissolved, and consents to such registration. The society shall supply to any person requiring the same a complete printed copy of the rules, with a copy of the certificate of incorporation appended thereto, and shall be entitled to charge for every such printed copy of rules a sum not exceeding one shilling.

Registration of rules.

Alteration of rules.

18. Any society under this Act, certified previously to the passing of this Act, may alter or rescind any rule or make any additional rule by the vote of three-fourths of the members present at a special meeting called for the purpose, of which meeting notice, specifying the proposed alteration, rescission, or addition shall be given to the members in the manner provided by the rules of the society, or in the absence of such rules by letters sent through the post seven days previous to such meeting; and any society hereafter established may alter or rescind any rule,

APPENDIX A.

or make an additional rule, in the manner its rules direct; and every society under this Act altering or rescinding any rule, or making an additional rule, shall forward two copies of every resolution for rescission of a rule, and of every alteration of or addition to its rules, signed by three members and the secretary, and a statutory declaration of an officer of the society that the provisions of this section have been complied with, to the registrar, who, if he find that such alteration, addition, or rescission is in conformity with this Act, shall return one of the copies to the secretary or other officer of the society with a certificate of registration, and retain and register the other copy.

Rules may be made to provide forms of conveyance, &c.

19. Any society under this Act, in a schedule to its rules, may describe the forms of conveyance, mortgage, transfer, agreement, bond, security for deposit or loan, or other instrument necessary for carrying its purposes into execution.

Evidence of registration.

20. Any certificate of incorporation or of registration, or other document relating to a society under this Act, purporting to be signed by the registrar, shall, in the absence of any evidence to the contrary, be received by the Court, and by all Courts of law and equity and elsewhere, without proof of the signature; and a printed copy of the rules of a society, certified by the secretary or other officer of the society to be a true copy of its registered rules, shall, in the absence of any evidence to the contrary, be received as evidence of the rules.

Rules to be binding on members and others.

21. The rules of a society under this Act shall be binding on the several members and officers of the society, and on all persons claiming on account of a member, or under the rules, all of whom shall be deemed and taken to have full notice thereof.

Change of name.

22. A society under this Act may change its name by resolution of three-fourths of the members present at a

meeting called for the purpose, provided that the new name is not identical with that of any society previously registered and still subsisting, or so nearly resembling the same as to be calculated to deceive, unless such subsisting society is in course of being terminated or dissolved, and consents to such registration. Notice of the change of name shall be sent to the registrar and registered by him, and he shall give a certificate of registration. Such change of name shall not affect any right or obligation of the society, or of any member thereof, or other person concerned.

Officers to give security.

23. Every officer of a society under this Act having the receipt or charge of any money belonging to the society shall, before taking upon himself the execution of his office, become bound with one sufficient surety at the least, in a bond according to the form set forth in the schedule to this Act, or give the security of a guarantee society, or such other security as the society direct, in such sum as the society require, conditioned for rendering a just and true account of all moneys received and paid by him on account of the society, and for payment of all sums of money due from him to the society, at such times as its rules appoint, or as the society require him to do so.

Officers to account.

24. Every such officer, his executors or administrators, shall, upon demand made, or notice in writing given or left at his last or usual place of residence, give in his account as may be required by the board of directors or committee of management of the society, to be examined and allowed or disallowed by them, and shall, on the like demand or notice, pay over all the moneys remaining in his hands, and deliver all securities and effects, books, papers, and property of the society in his hands or custody, to such person as the society appoint; and in case of any neglect or refusal to deliver such account, or to pay over such moneys, or to deliver such securities and effects, books, papers, and property, in manner aforesaid, the society may

APPENDIX A.

sue upon the bond, or may apply to the Court, who may proceed thereupon in a summary way, and make such order thereon as to the Court in its discretion shall seem just, which order shall be final and conclusive.

Investment of surplus funds.

25. Any society under this Act may from time to time, as the rules permit, invest any portion of the funds of the society, not immediately required for its purposes, upon real or leasehold securities, or in the public funds, or in or upon any parliamentary stock or securities, or in or upon any stock or securities payment of the interest on which is guaranteed by authority of parliament, or in the case of terminating societies, with other societies under this Act; and for the purpose of investments in the public funds or upon security of copyhold or customary estate, the society, or the board of directors or committee of management thereof, may from time to time appoint and remove trustees.

When trustees are absent, &c. registrars may order stock to be transferred.

26. When any person in whose name any stock transferable at the Bank of England or Bank of Ireland is standing, either jointly with another or others, or solely, as a trustee for any society under this Act, is absent from England or Ireland respectively, or becomes bankrupt, or files any petition or executes any deed for liquidation of his affairs by assignment or arrangement, or for composition with his creditors, or becomes a lunatic, or is dead, or if it be unknown whether such person is living or dead, the registrar, on application in writing from the secretary or other officer of the society and three members of the board of directors or committee of management thereof, and on proof satisfactory to him, may direct the transfer of the stock into the name of any other person or persons as trustee or trustees for the society; and such transfer shall be made by the surviving or continuing trustee or trustees, and if there be no such trustee, or if such trustee or trustees shall refuse or be unable to make such transfer,

and the registrar shall so direct, then by the accountant general or deputy or assistant accountant general of the Bank of England or Bank of Ireland, as the case may be; and the Governors and Companies of the Bank of England and Bank of Ireland respectively are hereby indemnified for anything done by them or any of their officers in pursuance of this section against any claim or demand of any person injuriously affected thereby.

Property of the society vested without conveyance.

27. All rights of action and other rights, and all estates and interests in real and personal estate whatsoever, *now* (*b*) belonging to or held in trust for any society certified under the said repealed Act, shall, on the incorporation of the society under this Act, vest in the society without any conveyance or assignment whatsoever, save and except in the case of stocks and securities in the public funds of Great Britain and Ireland, and estates in copyhold or customary hereditaments, the title to which cannot be transferred without admittance.

As to copyholds.

28. Where any society under this Act is entitled in equity to any hereditaments of copyhold or customary tenure by way of mortgage, the lord of the manor of which the same are held shall from time to time, if required by the society, admit such persons, not more than three, as the society appoints, to be trustees on its behalf as tenants in respect of such hereditaments, on payment of the usual fines, fees, and other dues payable on the admission of a single tenant, or may admit the society as tenant in respect of the same, on payment of such special fine, or compensation in lieu of fine, and fees as may be agreed upon.

Payment of sums not exceeding

29. If any member of or depositor with a society under this Act having in the funds thereof a sum of money not

(*b*) The word "now" was struck out by the Building Societies Act, 1877, s. 3, *post*, p. 278.

APPENDIX A.

50*l.* when members or depositors die intestate.

exceeding fifty pounds shall die intestate, then the amount due may be paid to the person who shall appear to the directors or committee of management of the society to be entitled under the Statute of Distributions to receive the same, without taking out letters of administration, upon the society receiving satisfactory evidence of death and a statutory declaration that the member or depositor died intestate, and that the person so claiming is entitled as aforesaid: Provided that whenever the society after the decease of any member or depositor has paid any such sum of money to the person who at the time appeared to be entitled to the effects of the deceased under the belief that he had died intestate the payment shall be valid and effectual with respect to any demand from any other person as next of kin or as the lawful representative of such deceased member or depositor against the funds of the society, but nevertheless such next of kin or representative shall have his lawful remedy for the amount of such payment as aforesaid against the person who has received the same.

Payment to persons appearing to be next of kin declared valid.

Provision for the case of a member dying intestate leaving an infant heir.

30. Whenever a member of a society under this Act, having executed a mortgage to the society, shall die intestate, leaving an infant heir or infant co-heiress, it shall be lawful for the said society, after selling the premises so mortgaged to them, to pay to the administrator or administratrix of the deceased member any money, to the amount of one hundred and fifty pounds, which shall remain in the hands of the said society after paying the amount due to the society and the costs and expenses of the sale, without being required to pay the same into the Post Office Savings Bank, as provided by the Trustees Relief Act, and the Acts amending or extending the same. The said sum of one hundred and fifty pounds to be considered as personal estate, and liable to duty accordingly.

Punishment of fraud in withholding money, &c.

31. If any person whosoever, by false representation or imposition, obtains possession of any moneys, securities, books, papers, or other effects of a society under this Act, or, having the same in his possession, withholds or misapplies the same, or wilfully applies any part thereof to purposes other than those expressed or directed in the rules of the society and authorized by this Act, he shall be liable on summary conviction to a penalty not exceeding twenty pounds, with costs not exceeding twenty shillings, and to be ordered to deliver up to the society all such moneys, securities, books, papers, or other effects to* the society, and to repay the amount of money applied improperly, and in default of such delivery of effects, or repayment of such amount of money, or payment of such penalty and costs aforesaid, to be imprisoned, with or without hard labour, for any time not exceeding three months; but nothing herein contained shall prevent any such person from being proceeded against by way of indictment if a conviction has not been previously obtained against him for the same offence under the provisions of this Act.

* Qy. "of."

Proceedings necessary for the termination or dissolution of a society.

32. A society under this Act may terminate or be dissolved—

1. Upon the happening of any event declared by its rules to be the termination of the society.
2. By dissolution in manner prescribed by its rules.
3. By dissolution with the consent of three-fourths of the members, holding not less than two-thirds of the number of shares in the society, testified by their signatures to the instrument of dissolution. The instrument of dissolution shall set forth—
   (*a.*) the liabilities and assets of the society in detail;
   (*b.*) the number of members, and the amount standing to their credit in the books of the society;
   (*c.*) the claims of depositors and other creditors, and the provision to be made for their payment;

APPENDIX A.

(*d.*) the intended appropriation or division of the funds and property of the society;

(*e.*) the names of one or more persons to be appointed trustees for the special purpose, and their remuneration.

Alterations in the instrument of dissolution may be made with the like consent, testified in the same manner. The instrument of dissolution and all alterations therein shall be registered in the manner provided for the registration of rules, and shall be binding upon all the members of the society.

4. By winding-up, either voluntarily under the supervision of the Court or by the Court, if the Court shall so order, on the petition of any member authorized by three-fourths of the members present at a general meeting of the society specially called for the purpose to present the same on behalf of the society, or on the petition of any judgment creditor for not less than fifty pounds, but not otherwise. General orders for regulating the proceedings of the Court under this section may be from time to time made by the authority for the time being empowered to make general orders for the Court.

Notice of the commencement and termination of every dissolution or winding-up shall be sent to the registrar and registered by him.

Societies may unite with others, or one society may transfer its engagements to another.

33. Two or more societies under this Act may unite and become one society, with or without any dissolution or division of the funds of such societies or either of them, or a society under this Act may transfer its engagements to any other such society, upon such terms as shall be agreed upon by three-fourths of the members (holding not less than two-thirds of the whole number of shares) of each of such societies present at general meetings respectively

convened for the purpose; but no such transfer shall prejudice any right of any creditor of either society. Notice of every such union or transfer shall be sent to the registrar and registered by him.

Determination of dis- (*Sic.*) arbitration.

34. Where the rules of a society under this Act direct disputes to be referred to arbitration, arbitrators shall be named and elected in the manner such rules provide, or, if there be no such provision, at the first general meeting of the society, none of the said arbitrators being beneficially interested, directly or indirectly, in its funds; of whom a certain number, not less than three, shall be chosen by ballot in each such case of dispute, the number of the said arbitrators and mode of ballot being determined by the rules of the society; the names of such arbitrators shall be duly entered in the minute book of the society, and, in case of the death or refusal or neglect of any of the said arbitrators to act, the society, at a general meeting, shall name and elect an arbitrator to act in the place of the arbitrator dying, or refusing or neglecting to act; and whatever award shall be made by the arbitrators or the major part of them, according to the true purport and meaning of the rules of the society, shall determine the dispute; and should either of the parties to the dispute refuse or neglect to comply with or conform to such award within a time to be limited therein, the Court, upon good and sufficient proof being adduced of such award having been made, and of the refusal of the party to comply therewith, shall enforce compliance with the same upon the petition of any person concerned. Where the parties to any dispute arising in a society under this Act agree to refer the dispute to the registrar, or where the rules of the society direct disputes to be referred to the registrar, the award of the registrar shall have the same effect as that of arbitrators.

Court may order compliance with the decision of arbitrators.

Determination of disputes by registrar.

APPENDIX A.

Determination of disputes by Court.

35. The Court may hear and determine a dispute in the following cases:

1. If it shall appear to the Court, upon the petition of any person concerned, that application has been made by either party to the dispute to the other party, for the purpose of having the dispute settled by arbitration under the rules of the society, and that such application has not within forty days been complied with, or that the arbitrators have refused or for a period of twenty-one days have neglected to make any award.
2. Where the rules of the society direct disputes to be referred to the Court or to justices.

Determination to be final.

36. Every determination by arbitrators or by the Court or by the registrar under this Act of a dispute shall be binding and conclusive on all parties, and shall be final to all intents and purposes, and shall not be subject to appeal, and shall not be removed or removable into any Court of law, or restrained or restrainable by the injunction of any Court of equity; provided always, that the arbitrators, or the registrar, or the Court, as the case may be, may, at the request of either party, state a case for the opinion of the Supreme Court of Judicature on any question of law, and shall have power to grant to either party to the dispute such discovery, as to documents and otherwise, as might now be granted by any Court of law or equity, such discovery to be made on behalf of the society by such officer of the society as the arbitrators, registrar, or Court may determine.

Buildings for the purpose may be purchased or leased.

37. A society under this Act may purchase, build, hire, or take upon lease any building for conducting its business, and may adapt and furnish the same, and may purchase or hold upon lease any land for the purpose only of erecting thereon a building for conducting the business of the

society, and may sell, exchange, or let such building, or any part thereof.

Minors may be elected members.

38. Any person under the age of twenty-one years may be admitted as a member of any society under this Act, the rules of which do not prohibit such admission, and may give all necessary acquittances; but during his nonage he shall not be competent to vote or hold any office in the society.

Shares may be held by two or more persons.

39. Two or more persons may jointly hold a share or shares in any society under this Act; and all shares held jointly by any two or more persons in any society subsisting at the time appointed for the commencement of this Act, the rules whereof shall not prohibit such joint holding, shall be deemed to be lawfully so held.

Societies shall make annual audits and statements of the funds to the members.

40. The secretary or other officer of every society under this Act, shall, once in every year at least, prepare an account of all the receipts and expenditure of the society since the preceding statement, and a general statement of its funds and effects, liabilities and assets, showing the amounts due to the holders of the various classes of shares respectively, to depositors and creditors for loans, and also the balance due or outstanding on their mortgage securities (not including prospective interest), and the amount invested in the funds or other securities; and every such account and statement shall be attested by the auditors, to whom the mortgage deeds and other securities belonging to the society shall be produced, and such account and statement shall be countersigned by the secretary or other officer; and every member, depositor, and creditor for loans shall be entitled to receive from the society a copy of such account and statement, and a copy thereof shall be sent to the registrar within fourteen days after the annual or other general meeting at which it is presented, and another copy thereof shall be suspended in a conspicuous place in every office of the society under this Act.

APPENDIX A.

Exemption from stamp duties.

41. No rules of any society under this Act, nor any copy thereof, nor any power, warrant, or letter of attorney granted or to be granted by any person as trustee for the society for the transfer of any share in the public funds standing in his name, nor any receipts given for any dividend in any public stock or fund, or interest of exchequer bills, nor any receipt, nor any entry in any book of receipt, for money deposited in the funds of the society, nor for any money received by any member, his executors, or administrators, assigns, or attorneys, from the funds of the society, nor any transfer of any share, nor any bond or other security to be given to or on account of the society, or by any officer thereof, nor any order on any officer for payment of money to any member, nor any appointment of any agent, nor any certificate or other instrument for the revocation of any such appointment, nor any other instrument or document whatever required or authorized to be given, issued, signed, made, or produced in pursuance of this Act, or of the rules of the society, shall be subject or liable to or charged with any stamp duty or duties whatsoever, provided that the exemption shall not extend to any mortgage.

Receipt endorsed on mortgage to be sufficient discharge without reconveyance.

42. When all moneys intended to be secured by any mortgage or further charge given to a society under this Act in England or Ireland have been fully paid or discharged, the society may endorse upon or annex to such mortgage or further charge a reconveyance of the mortgaged property to the then owner of the equity of redemption, or to such persons and to such uses as he may direct, or a receipt under the seal of the society, countersigned by the secretary or manager, in the form specified in the schedule to this Act, and such receipt shall vacate the mortgage or further charge or debt, and vest the estate of and in the property therein comprised in the person for the time being entitled to the equity of redemption, without

any re-conveyance or re-surrender whatever; and if the said mortgage or further charge has been registered under any Act for the registration or record of deeds or titles, the registrar under such Act, or his deputy or assistant registrar, or the recording officer, as the case may be, or, in the case of copyholds or lands of customary tenure, if the mortgage or further charge has been entered on any court rolls, the steward of the manor or his deputy respectively shall, on production of such receipt, verified by oath of any person, make an entry opposite the entry of the charge or mortgage, to the effect that such charge or mortgage is satisfied, and shall grant a certificate, either on the said mortgage or charge or separately, to the like effect, which certificate shall be received in evidence in all courts and proceedings without any further proof, and which entry shall have the effect of clearing the register or record of such mortgage; and the registrar or recording officer shall be entitled to a fee of two shillings and sixpence for making the said entry and granting the said certificate, and such fee shall in Ireland be paid by stamps, and applied as the other fees of the Registry of Deeds Office and Record of Title Office are now by law directed to be paid and applied.

Penalties.

43. If any society hereafter formed under this Act, or any persons representing themselves to be a society under this Act, commence business without first obtaining a certificate of incorporation under this Act, or if any society under this Act makes default in forwarding to the registrar any returns or information by this Act required, or in inserting in any deposit book or acknowledgment or security for loan the matters required by section fifteen of this Act to be inserted therein, or makes a return wilfully false in any respect, the person or persons by whom business shall have been so commenced, or by whom such default shall have been made, or who shall have made such

APPENDIX A.

wilfully false return, shall be liable for every day business is so carried on, or for every such default or false return, upon summary conviction before justices at the complaint of the registrar, to a penalty not exceeding five pounds. If any society under this Act receives loans or deposits in excess of the limits prescribed by this Act, the directors or committee of management of such society receiving such loans or deposits on its behalf shall be personally liable for the amount so received in excess.

Regulations.

44. One of Her Majesty's principal secretaries of state may from time to time make regulations respecting the fees, if any, to be paid for the transmission, registration, and inspection of documents under this Act, and generally for carrying this Act into effect. *The registrar shall give his certificates in the forms contained in the schedule to this Act respectively* (*c*).

SCHEDULE.

FORM OF BOND.

[For this form, see *ante*, p. 87.]

FORM OF RECEIPT TO BE ENDORSED ON MORTGAGE OR FURTHER CHARGE.

[For this form, see *ante*, p. 168.]

FORMS OF CERTIFICATE TO BE GIVEN UNDER THIS ACT.

[Other forms are substituted for these by the Building Societies Act, 1877, *post*, p. 279.]

(*c*) The words in italics were repealed by the Stat. Law Rev. Act, 1883 (46 & 47 Vict. c. 39).

THE BUILDING SOCIETIES ACT, 1875.

38 VICT. c. 9.

An Act to repeal section eight of the Building Societies Act, 1874, and make other provision in lieu thereof.

[22nd April, 1875.]

APPENDIX A.

WHEREAS by the Building Societies Act, 1874, the Act of the session of the sixth and seventh years of the reign of His late Majesty King William the Fourth, chapter thirty-two, intituled "An Act for the regulation of benefit building societies," was repealed, subject as in the recited Act mentioned, and by section eight of the said Building Societies Act, 1874, it was enacted as follows:

"Every society, the rules of which have been certified under the said repealed Act, shall be deemed to be a society under this Act, and may obtain a certificate of incorporation under this Act, and thereupon its rules shall, so far as the same are not contrary to any express provisions of this Act, continue in force until altered or rescinded as hereinafter mentioned:"

And whereas the words in the said section, whereby existing societies not having a certificate of incorporation are deemed to be societies under the Building Societies Act, 1874, were inserted through inadvertence:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Section eight of the Building Societies Act, 1874, is hereby repealed as from the date of the commencement of

Repeal of s. 8 of 37 & 38 Vict. c. 42.

APPENDIX A.

such last-mentioned Act: Provided that such repeal shall not affect any certificate of incorporation given, or any other thing heretofore done or suffered in pursuance of such section before the date of the passing of this Act.

Substitution of clause for s. 8 of 37 & 38 Vict. c. 42.

2. From and after the passing of this Act every society, the rules of which have been certified under the said Act of the session of the sixth and seventh years of the reign of His late Majesty King William the Fourth, chapter thirty-two, intituled "An Act for the regulation of benefit building societies," may obtain a certificate of incorporation under the Building Societies Act, 1874, and thereupon shall be deemed to be a society under that Act; and its rules shall, so far as the same are not contrary to any express provisions of that Act, continue in force until altered or rescinded as in that Act mentioned.

Short title.

3. This Act may be cited as the Building Societies Act, 1875.

THE BUILDING SOCIETIES ACT, 1877.

40 & 41 VICT. c. 63.

An Act to amend the Building Societies Act, 1874.

[14th August, 1877.]

WHEREAS it is expedient to amend the laws relating to building societies: APPENDIX A.

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Short title, &c. 37 & 38 Vict. c. 42. 38 & 39 Vict. c. 9.

1. This Act shall be construed as one with the Building Societies Act, 1874 (herein termed "the principal Act"), and the Building Societies Act, 1875, and may be cited as the Building Societies Act, 1877, or, together with the said Acts, as the Building Societies Acts.

Societies may change their chief offices.

2. Any society under the principal Act may change its chief office in the manner its rules direct, or, if there be no such direction, then at a general meeting specially called for the purpose, in the manner set forth in the rules of the society; and no alteration of rule shall be necessary upon such change, nor shall the provisions of section eighteen of the principal Act apply to such change. Notice of every such change shall be given by the secretary of the society to the registrar within seven days after such change, and shall be registered by him, and he shall give a certificate of such registration.

Notice of such change to be sent to registrar.

APPENDIX A.

Amendment of 37 & 38 Vict. c. 42, s. 27.

3. Section twenty-seven of the principal Act shall be read as if the word "now" were omitted therefrom.

Rights held in trust to vest in societies.

4. All rights of action and other rights and interests in real and personal estate whatsoever held in trust for any society heretofore incorporated under the principal Act shall, on the passing of this Act, vest in the society without any conveyance or assignment whatsoever, except in the case of stocks and securities in the public funds of Great Britain and Ireland, and estates in copyhold or customary hereditaments the title to which cannot be transferred without admittance.

Registration of union of societies or of transfer of engagements to operate as effectual conveyance of funds and property of uniting societies to the united society and to society to which engagements are transferred.

5. The registration by the registrar of the notice of the union of any societies, or of the transfer of the engagements of any society to another society, in terms of and subject to the provisions of section thirty-three of the principal Act, shall operate as an effectual conveyance, transfer, and assignment, as at the date of the said registration, of the funds, property, and assets of the societies so uniting to the united society, or of the society transferring its engagements to the society to which such engagements may be transferred, as may be set forth in the instrument of union or transfer of engagements, without any conveyance, transfer, or assignment whatsoever, save and except in the case of stocks and securities in the public funds of Great Britain and Ireland, and estates in copyhold or customary hereditaments the title to which cannot be transferred without admittance: provided always, that such union or transfer of engagements shall not affect the rights of any creditor of either or any society uniting or transferring its engagements.

Forms in schedule to be used.

6. The forms in the schedule to this Act shall henceforth be used under the Building Societies Acts.

See now 57 & 58 Vict. c. 47. 1894

SCHEDULE.

Certificate of Incorporation.

[For the form of certificate, see *ante*, p. 30.]

Certificate of Registration of Alteration of Rules.

The Registrar of Building Societies in [England, Scotland, *or* Ireland] hereby certifies that the foregoing alterations of [*or* addition to] the rules of the Building Society, established at , in the county of , are registered under the Building Societies Act, 1874.

This day of , 18 .

[*Seal of Central Office, or Signature of Assistant Registrar of Friendly Societies.*]

Certificate of Registration of Change of Name.

The Registrar of Building Societies in [England, Scotland, *or* Ireland] hereby certifies that the registered name of the Building Society, established at , in the county of , is changed from the date hereof to the name following:

This day of , 18 .

[*Seal of Central Office, or Signature of Assistant Registrar of Friendly Societies.*]

Certificate of Alteration of Chief Office.

The Registrar of Building Societies in [England, Scotland, *or* Ireland] hereby certifies that the registered chief office of the Building Society, established at , in the county of , is changed from the date hereof to the office or place following:

This day of , 18 .

[*Seal of Central Office, or Signature of Assistant Registrar of Friendly Societies.*]

THE BUILDING SOCIETIES ACT, 1884.

47 & 48 VICT. c. 41.

An Act to amend the Building Societies Act, 1874.

[7th August, 1884.]

APPENDIX A. WHEREAS it is expedient to amend the laws relating to building societies:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Construction and short title.

1. This Act shall be construed as one with the Building Societies Act, 1874, and the Building Societies Act, 1875, and the Building Societies Act, 1877, and may be cited as the Building Societies Act, 1884, or, together with the said Acts, as the Building Societies Acts.

Definition of word "disputes."

2. The word "disputes" in the Building Societies Acts, or in the rules of any society thereunder, shall be deemed to refer only to disputes between the society and a member, or any representative of a member in his capacity of a member of the society, unless by the rules for the time being it shall be otherwise expressly provided; and in the absence of such express provision, shall not apply to any dispute between any such society and any member thereof, or other person whatever, as to the construction or effect of any mortgage deed, or any contract contained in any document, other than the rules of the society, and shall not prevent any society, or any member thereof, or any person claiming through or under him, from obtaining in the

ordinary course of law any remedy in respect of any such mortgage or other contract to which he or the society would otherwise be by law entitled: provided always, that nothing in this Act shall apply to any dispute pending at any time before the passing of this Act between any such society and any member thereof, or other person, which before the passing of this Act shall have been actually referred, or agreed to be referred, to arbitration, or as to which the jurisdiction of any court of law shall have been adjudged to be excluded by a decision of any court of competent jurisdiction in an action or suit between the society and any member thereof or other person.

APPENDIX B.

TREASURY REGULATIONS, 1884.

BUILDING SOCIETIES ACTS.

In pursuance of the powers vested in me by the above-mentioned statutes, I, the Right Honourable Sir William George Granville Vernon Harcourt, one of Her Majesty's Principal Secretaries of State, hereby revoke the Regulations made thereunder, and make the following Regulations in lieu thereof:—

(1.) Every application for a certificate of incorporation to a society in existence on the 2nd November, 1874, shall be made by a person authorized by a general meeting of the society, specially called for the purpose, and shall be in the Form A. annexed hereto, and shall be accompanied by the following documents:—

(a) A copy of the rules of the society as they exist at the date of the application.

(b) A statutory declaration by the applicant in the Form B. annexed hereto.

If the registrar at the time the application is received by him has not received from the clerk of the peace for the county in which the society is established a transcript of the certified and enrolled rules of the society, he shall make application to the clerk of the peace for the same, and if the same is not received by him within seven days of such application, shall, as soon as practicable, acquaint the applicant for incorporation therewith, who must furnish evidence that the rules are certified as provided by

37 & 38 Vict. c. 42, s. 11, before the society can be incorporated.

(2.) Every application for a certificate of incorporation to a society about to be established, shall be in the Form C. annexed hereto, and shall be accompanied by two printed copies of the rules marked and signed, as mentioned in the said Form.

(3.) An alteration of the rules of a society may be either—

(a.) A partial alteration, consisting of the addition of a new rule or part of a rule or rules to the existing rules, or of the substitution of a new rule or part of a rule or rules for any of the existing rules, or of a rescission of any of the existing rules or any part thereof without any substitution, or of more than one or all of those modes; or,

(b.) A complete alteration consisting of the substitution of an entire set of rules for the existing set of rules.

(4.) An application for the registration of a partial alteration of rules must be made by three members and the secretary of the society, and must be made in the Form D. annexed hereto, and must be accompanied by a statutory declaration in the Form E. annexed hereto, and by a printed copy of the existing rules, and by the following documents:—

(a.) If the partial alteration consists of the addition or substitution of a new rule or part of a rule or rules, two copies of such rule or part of a rule or rules, each copy being marked Y. and signed by each of the applicants.

(b.) If the partial alteration consists of the rescission of any of the rules without any substitution, two copies of the resolution for such rescission, each copy being marked Y. and signed by each of the applicants.

APPENDIX B.

The registrar before registering the partial alteration of rules, shall ascertain that it is in conformity with the Building Societies Acts.

(5.) An application for the registration of a complete alteration of rules shall be made by three members and the secretary of the society, and shall be in the Form F. annexed hereto, and must be accompanied by a statutory declaration in Form E. annexed hereto, and by a printed copy of the existing rules and by two printed copies of the new rules, each copy being marked Z. and signed by each of the applicants; and the registrar before registering the new set of rules, shall ascertain that it provides for all matters which, by 37 & 38 Vict. c. 42, s. 16, are to be provided for by rules, and is in conformity with the Building Societies Acts.

(6.) The certificate of registry of an alteration of rules shall be delivered to the applicants attached to one of the copies of the alteration.

(7.) The last words in the name of any society established and incorporated under the Building Societies Acts, shall be "Building Society"; and no change of name by any society shall be registered unless the new name ends with those words; and the Registrar may refuse to allow the insertion in the name of any society about to be established and applying for incorporation under the said Acts, or the retention in the name of any society which seeks to change its name, of any words implying that the society is other than a building society.

Change of Name.

(8.) Every society changing its name shall give notice to the Registrar in the Form G. annexed hereto, accompanied by a statutory declaration in the Form H. annexed hereto. The Registrar, before issuing a certificate of registration of change of name, shall ascertain that the new name is not identical with that of any society previ-

ously registered, or so nearly resembling the same as to be calculated to deceive; and in the event of such identity or resemblance, may require the society desiring to change its name to satisfy him that such previously registered society is not subsisting, or, if subsisting, that it is in course of being terminated or dissolved, and consents to such registration.

Transfer of Stock.

(9.) Every application to the Registrar to direct a transfer of stock shall follow, as near as may be, the Form I. annexed hereto, and shall be accompanied by a statutory declaration in the Form K. annexed hereto, or as near thereto as the facts admit, and by the certificate of the stock in respect of which the application is made.

(10.) Before making the application, the society shall submit to the Registrar for examination a draft copy, on foolscap paper, written on one side only, of the proposed application and declaration.

(11.) The Registrar, before directing the transfer, may require further proof of any statement in the application.

(12.) The Registrar shall give a direction in the Form L. annexed hereto so framed in each case as to suit the particular circumstances, and shall register the same and deliver the same to the applicants, endorsed with the word "Registered," and duly authenticated.

Dissolution.

(13.) The instrument of dissolution shall be on foolscap paper in the Form M. annexed hereto, and shall be signed in duplicate, and accompanied by a statutory declaration in the Form N. annexed hereto.

(14.) The Registrar shall return one of the duplicates to the society, with a certificate in the Form O. annexed hereto.

(15.) Alterations in the instrument of dissolution shall be signed, declared to and certified in like manner.

APPENDIX B.

(16.) When a society is dissolved otherwise than by an instrument of dissolution, notice of the commencement of the dissolution shall be given to the Registrar in duplicate, within fourteen days from such commencement, in the Form P. annexed hereto, and the Registrar shall return one copy to the society, endorsed with the word "Registered," and duly authenticated.

(16a.) When a society is wound up either voluntarily under the supervision of the Court or by the Court, notice of the commencement of the winding-up shall be given to the Registrar in duplicate, within fourteen days from the date of the order for winding up subject to the supervision of the Court, or of the order for winding up by the Court, as the case may be, in the Form Pa. hereto annexed, and the Registrar shall return one copy to the society, endorsed with the word "Registered," and duly authenticated.

(17.) Notice of the termination of every dissolution shall be given to the Registrar in duplicate, within fourteen days from such termination, in the Form Q. annexed hereto, and the Registrar shall return one copy to the society, endorsed with the word "Registered," and duly authenticated.

(17a.) Notice of the termination of every winding up subject to the supervision of the Court or by the Court shall be given in duplicate to the Registrar within fourteen days from the termination of such winding-up in the Form Qa. hereto annexed, and the Registrar shall return one copy to the society, endorsed with the word "Registered," and duly authenticated.

Union of Societies or Transfer of Engagements.

(18.) Where two or more societies unite, notice shall be given to the Registrar in duplicate in the Form R. annexed hereto, and the Registrar shall return one copy to the united society, endorsed with the word "Registered," and duly authenticated.

(19.) Where a society transfers its engagements to another, notice shall be given to the Registrar in duplicate in the Form S. annexed hereto, and the Registrar shall return one copy to the transferee society, endorsed with the word "Registered," and duly authenticated.

Arbitration.

(20.) The submission of a dispute to the Registrar shall be in duplicate in the Form T. annexed hereto. Where the rules of the society provide that disputes shall be submitted to the Registrar, and either party to the dispute refuses or neglects to fill up and sign the portion of the submission relating to his case, the other party may send the submission to the Registrar. The Registrar may require either party to support any statement in the submission by statutory declaration.

(21.) If the Registrar desires the parties to appear, notice shall be given in the Form V. annexed hereto.

(22.) The award of the Registrar shall be in the Form W. annexed hereto.

(23.) If any order for discovery be necessary, it shall be in the Form X. annexed hereto.

(24.) The notice of change of the chief office of a society shall be in Form Y.

Fees.

(25.) The following fees shall be payable under the Acts:—

	£	s.	d.
For the certificate of incorporation of a society	1	0	0
For the certificate of registry of an alteration of rules	0	10	0
For the certificate of registry of a change of name	0	10	0
For a direction to transfer stock . . .	1	0	0
For the certificate of registry of an instrument of dissolution, or alteration therein .	0	10	0

APPENDIX B.

	£	s.	d.
For registry of notice of the commencement or termination of a dissolution or winding up .	0	2	6
For registry of union or transfer . .	0	10	0
For an award by the Registrar on a dispute . And, if more than one hearing or an adjournment becomes necessary, then 1*l.* more for every hearing after the first, and for every adjournment.	1	0	0
For an order for discovery	0	10	0
For every document required to be authenticated by the Registrar, not chargeable with any other fee	0	2	6
For every inspection on the same day of documents (whether one or more), in the custody of the Registrar, relating to one and the same society	0	1	0
For every copy or extract of any document in the custody of the Registrar, not exceeding 216 words 1*s.*, and if exceeding that number 4*d.* per folio of 72 words, in addition to the fee for authentication.			

Authentication of Documents by Registrar.

(26.) Every document under the Building Societies Acts, bearing the seal of the Central Office for Registry of Friendly Societies, or the signature of the Assistant-Registrar of Friendly Societies for Scotland or Ireland, as the case may require, shall be deemed to be duly authenticated for the purposes of the said Acts and the Regulations made thereunder.

(27.) Where a document is tendered for registry which appears to the Registrar substantially to comply with the provisions of the Building Societies Acts the Registrar may dispense with the use of any of the forms prescribed by the Regulations, but nothing in this Regulation contained shall hinder the Registrar from refusing to register

a document not in the prescribed forms when it shall appear to such Registrar to be unnecessarily long, or to contain extraneous matter.

(28.) The Registrar may also modify any such forms to suit particular cases, and may dispense with the obligation to supply a duplicate of any document where such obligation is imposed only by the Regulations.

Whitehall,
December, 1884.

For societies registered in Scotland the address "43, New Register House, Edinburgh" and in Ireland "9, Upper Ormond Quay, Dublin," will be substituted for "28, Abingdon Street, Westminster."

Form A.

Building Societies Acts.

Application for a Certificate of Incorporation to a Society existing on November 2, 1874.

——— Building Society.

This application for a certificate of incorporation under the above-mentioned Act to the ——— Building Society, which on the 2nd of November, 1874, was a building society existing under the Act 6 & 7 Will. IV. c. 32, is made by the person whose name is subscribed at the foot hereof.

Accompanying this application are sent a copy of the rules of the society, as they exist at the date of the application, and a statutory declaration by the applicant (in the form required by the Regulations of the Secretary of State) to the effect that he was authorized to make this applica-

APPENDIX B.

tion by a general meeting of the society specially called for the purpose.

Signed ———.

Address ———.

Date ———.

To the Registrar of Building Societies,
28, Abingdon Street, Westminster,
London, S. W.

FORM B.

Building Societies Acts.

Declaration accompanying Application in Form A.

——— Building Society.

——— of ——— do solemnly and sincerely declare that at a general meeting of the ——— Society, specially called for the purpose, authority was duly given to me to make application for the incorporation of the said society under the above-mentioned Acts; and that the rules of the said society have been certified under the 6 & 7 Will. IV. c. 32.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Taken and received before me, one of Her Majesty's justices of the peace for the county of ———, at ———, in the said county, this ——— day of ———, 18—.

Form C.

Building Societies Acts.

Application for a Certificate of Incorporation to a Society about to be established.

——— Building Society.

1. This application for a certificate of incorporation for a society intended to be established under the above-mentioned Acts as a building society, under the name of the ——— Building Society, is made by the four persons whose names are subscribed at the foot hereof.

2. The name of the society and chief office or place of meeting for the business of the society are set forth in rule No. ———.

3. The manner in which the stock or funds of the society are to be raised, the terms upon which paid up shares (if any) are to be issued and repaid, and whether preferential shares are to be issued, and if so, within what limits, if any; and whether the society intends to avail itself of the borrowing powers contained in the Acts, and, if so, within what limits, which do not exceed the limits prescribed by the Acts, are set forth in rule No. ———.

4. The purposes to which the funds of the society are to be applied and the manner in which they are to be invested, are set forth in rule No. ———.

5. The terms upon which shares may be withdrawn, and upon which mortgages may be redeemed, are set forth in rule No. ———.

6. The manner of altering and rescinding the rules of the society, and of making additional rules, is set forth in rule No. ———.

7. The manner of appointing, remunerating, and removing the board of directors or committee of management, auditors, and other officers, is set forth in rule No. ———.

APPENDIX B.

8. The manner of calling general and special meetings of the members is set forth in rule No. ———.

9. Provision for an annual or more frequent audit of accounts, and inspection by the auditors of the mortgages and other securities belonging to the society is made by rule No. ———.

10. Whether disputes between the society and any of its members, or any person claiming by or through any member, or under the rules, shall be settled by reference to the Court, or to the Registrar, or to arbitration, is determined by rule No. ———.

11. Provision for the device, custody, and use of the seal of the society, and that it shall bear the registered name thereof, is made by rule No. ———.

12. Provision for the custody of the mortgage deeds and other securities belonging to the society is made by rule No. ———.

13. The powers and duties of the board of directors or committee of management and other officers are set forth in rule No. ———.

14. The fines and forfeitures to be imposed on members of the society are set forth in rule No. ———.

15. The manner in which the society shall be terminated or dissolved, and whether it is terminating or permanent, are set forth in rule No. ———.

16. In other respects the rules are in conformity with the above-mentioned Acts.

17. Accompanying this application are sent two printed copies of the rules, each marked P. and signed by each of the applicants.

(Signed) 1. ———, Member.
2. ———, Member.
3. ———, Member.
4. ———, Secretary.

* Here insert the address to which the answer to the application is to be sent.

*

Dated the ——— day of ———, 18—.

To the Registrar of Building Societies,
28, Abingdon Street, Westminster, London, S.W.

Form D.

Building Societies Acts.

Application to register a Partial Alteration of Rules.

——— Building Society. Register No. ———.

This application to register a partial alteration of the rules of the ——— Building Society is made by the four persons whose names are subscribed at the foot hereof.

With this application are sent:—

(a.) A printed copy of the registered rules marked to show where and in what way they are altered:

(b.) Two printed [*or* written] copies of the alteration, each marked O., signed by each of the applicants:

(c.) A statutory declaration of an officer of this society, that in making the alteration of rules now submitted for registry, the provisions of sect. 18 of the 37 & 38 Vict. c. 42 have been complied with.

(Signed) 1. ———, Member.
2. ———, Member.
3. ———, Member.
4. ———, Secretary.

Address ———,

Date ——— day of ———, 18—.

To the Registrar of Building Societies,
Abingdon Street, Westminster.

Form E.

Building Societies Acts.

Declaration accompanying Alteration of Rules.

——— Building Society. Register No. ———.

I, ——— of ———, an officer of the above-named society, do solemnly and sincerely declare that in making

APPENDIX B.

the alteration of the rules of the said society, the application for the registration of which is appended to this declaration, the provisions of sect. 18 of the 37 & 38 Vict. c. 42, have been complied with.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Taken and received before me, one of Her Majesty's justices of the peace for the county of ———, at ———, in the said county, this ——— day of ———, 18—.

FORM F.

Building Societies Acts.

Application for Registry of Complete Alteration of Rules.

——— Building Society. Register No. ———.

1. This application for the registration of a complete alteration of the registered rules of the ——— Building Society is made by the four persons whose names are subscribed at the foot hereof.

2. The complete alteration submitted for registration is the substitution of the set of rules, two printed copies of which (each copy marked P. and signed by each of the applicants) accompany this application, for the set of rules already registered.

3. The name of the society, and chief office or place of meeting for the business of the society are set forth in rule No. ———.

4. The manner in which the stock or funds of the society are to be raised, the terms upon which paid-up shares (if any) are to be issued and repaid, and whether preferential

shares are to be issued, and if so, within what limits, if any; and whether the society intends to avail itself of the borrowing powers contained in the Acts, and, if so, within what limits, which do not exceed the limits prescribed by the Acts, are set forth in rule No. ———.

5. The purposes to which the funds of the society are to be applied, and the manner in which they are to be invested, are set forth in rule No. ———.

6. The terms upon which the shares may be withdrawn, and upon which mortgages may be redeemed, are set forth in rule No. ———.

7. The manner of altering and rescinding the rules of the society, and of making additional rules, is set forth in rule No. ———.

8. The manner of appointing, remunerating and removing the board of directors or committee of management, auditors and other officers, is set forth in rule No. ———.

9. The manner of calling general and special meetings of the members is set forth in rule No. ———.

10. Provision for an annual or more frequent audit of the accounts, and inspection by the auditors of the mortgages and other securities belonging to the society, is made by rule No. ———.

11. Whether disputes between the society and any of its members, or any person claiming by or through any member, or under the rules, shall be settled by reference to the Court, or to the Registrar, or to arbitration, is determined by rule No. ———.

12. Provision for the device, custody and use of the seal of the society, and that it shall bear the registered name thereof, is made by rule No. ———.

13. Provision for the custody of the mortgage deeds and other securities belonging to the society is made by rule No. ———.

14. The powers and duties of the board of directors or

APPENDIX B.

committee of management and other officers are set forth in rule No. ———.

15. The fines and forfeitures to be imposed on members of the society are set forth in rule No. ———.

16. The manner in which the society shall be terminated or dissolved, and whether it is terminating or permanent, are set forth in rule No. ———.

17. This application is also accompanied by a printed copy of the existing rules and by a statutory declaration of ———, an officer of the said society, to the effect that in making the alteration of rules now submitted for registration the provisions of sect. 18 of the 37 & 38 Vict. c. 42 have been complied with.

(Signed) 1. ——— Member.
2. ——— Member.
3. ——— Member.
4. ——— Secretary.

Address ———.
Date ———.

To the Registrar of Building Societies,
28, Abingdon Street, Westminster, S.W.

——— day of ——— 18—.

FORM G.

Building Societies Acts.

Notice to Registrar of Change of Name.

[Name already registered.] —— Building Society. Register No. —.

Notice is hereby given, that at a meeting of the ——— Building Society called for the purpose, held on the ———

day of ———, ——, it was resolved by three-fourths of the members present:—

"That the name of the society be changed to ——— Building Society."

——— } Member.
——— } Member.
——— } Member.
——— Secretary.

Address ———.

Date ——— day of ——— 18—.

To the Registrar of Building Societies,
28, Abingdon Street, Westminster.

FORM H.

Building Societies Acts.

Declaration as to Change of Name.

[Name already registered.] —— Building Society. Register No. —.

I ——— of ——— an officer of the above-named society, do solemnly and sincerely declare that in making the change of name, notice of which is appended to this declaration, the provisions of sect. 22 of the 37 & 38 Vict. c. 42 have been duly complied with.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Taken and received before me, one of Her Majesty's justices of the peace for the said county of ———, at ———, in the said county, this ——— day of ——— 18—.

APPENDIX B.

FORM I.

Building Societies Acts.

Application for Direction to transfer Stock.

——— Building Society. Register No. —.

1. This application is made by the four persons whose names are subscribed at the foot hereof, being the secretary [*if not, state which other officer*] and three members of the board of directors [*or* committee of management] of the ——— Building Society.

2. For the purpose of making an investment in the public funds, the said society [*or* the board of directors, *or* the committee of management of the said society] did on the ——— day of ——— appoint ——— of ——— in the county of ——— [*here name and describe all the trustees then appointed*] to be trustees.

3. On the ——— day of ——— the sum of ——— was invested in the purchase of ——— stock transferable at the Bank of England [*or* Ireland] in the names of the said trustees, and the same is still standing in their names, as follows:—[*state exactly in what names the stock stands*].

4. The said ——— is absent from England [*or* Ireland] [*or* became bankrupt on the ——— day of ———, *or* filed a petition (*or* executed a deed) for liquidation of his affairs by assignment or arrangement, or for composition with his creditors on the ——— day of ———, *or* has become a lunatic, *or* died on the ——— day of ———, *or* has not been heard of for ——— years, and it is not known whether he is living or dead].

5. On the ——— of ——— the said society [*or* the board of directors, *or* the committee of management of the said society] removed the said ——— from his appointment as one of the said trustees, and appointed ——— [*give full name and description*] in his place.

6. Since such removal, application has been made in writing to the said [*removed trustee*] to join in the transfer of the said stock into the names of the said [*here give the names of the other trustees, and the new trustee appointed in the place of the one removed*] as trustees for the said society, but he has refused to comply [*or*, has not complied] with such application. [*This paragraph may be omitted or varied as the facts require.*]

7. This application to the Registrar is made pursuant to 37 & 38 Vict. c. 42, sect. 26, that he may direct the said stock to be transferred into the names of the said ——— as trustees for the society, by ——— [*this blank should be filled by the names of the surviving or continuing trustee or trustees, if any, and if they be willing and able to make the transfer; but if there be no such trustee, or if he or they refuse or be unable to make the transfer, then by the words* the accountant-general or deputy or assistant accountant-general of the said bank; *and a full statement of the facts and of the grounds of such refusal or inability should be made*].

——— Secretary [*or* officer].

(Seal of the Society.) ———, ———, ——— } Members of the Board or Committee.

The seal must be applied and witnessed in the manner directed by the rules of the society.

Address ———.

Date ——— day of ——— 18—.

To the Registrar of Building Societies,
28, Abingdon Street, Westminster.

APPENDIX B.

FORM K.

Building Societies Acts.

Declaration verifying Statements in an Application for Direction to transfer Stock.

——— Building Society. Register No. ———

——— of ——— in the county of ——— do solemnly and sincerely declare that I am the secretary [*or other officer, naming the office*] of the ——— Building Society.

That ———, ———, and ———, whose names are subscribed at the foot of the application hereto annexed, are members of the board of directors [*or* committee of management] of the said society.

That on the ——— day of ———, 18—, ——— and ——— therein mentioned were appointed trustees of the said society.

That on the ——— day of ———, 18—, the sum of ——— was invested in the purchase of ——— stock, transferable at the Bank of England [*or* Ireland] in the names of the said trustees, and the declarant believes that it is still standing in their names, as follows:—[*state as in Form I.*]

That the said ——— is absent from England [*or as the case may be*].

That on the ——— day of ———, the said ——— was removed from his appointment as one of the said trustees, and ——— was appointed in his place.

That since such removal, application has been made in writing to the said* ——— to join in the transfer of the said stock into the names of the said* ——— as trustees for the said society, but he has refused to comply [*or* has not complied] with such application. [*This paragraph may be omitted or varied as the facts require.*]

And I make this solemn declaration, conscientiously

* These blanks will be filled as in Form I.

believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Taken and received before me, one of Her Majesty's justices of the peace for the said county of ———, at ———, in the said county, this ——— day of ———, 18—.

FORM L.

Building Societies Acts.

Direction by the Registrar to transfer Stock.

Whereas it has been made to appear to the Registrar of Building Societies that ——— stock, transferable at the Bank of England [*or* Ireland] is now standing in the names of ———, ———, and ———, who are trustees for the ——— Building Society, incorporated under the above-mentioned Acts.

And that the said ——— is absent from England [*or as the case may be*].

And that ——— has been appointed trustee for the said society in place of the said ———.

The Registrar of Building Societies hereby directs, pursuant to sect. 26 of the Building Societies Act, 1874, that the said sum of ——— so standing in the books of the Governor and Company of the Bank of England [*or* Ireland] in the names of the said ——— be transferred in the said books by the said ——— into the names of the said ———. *Or,*

And that there is no trustee of the said society, or that the surviving or continuing trustee or trustees refuse or are unable to transfer the said stock.

The Registrar of Building Societies hereby directs, pursuant to sect. 26 of the Building Societies Act, 1874, that

APPENDIX B.

the said sum of ———, so standing in the books of the Governor and Company of the Bank of England [*or* Ireland] be transferred in the said books by the accountant-general, or deputy or assistant accountant-general, of the said bank into the names of the said ———.

Address ———. Date ———, 18—.

[*To be authenticated as provided by Regulation* 26.]

FORM M.

Building Societies Acts.

Instrument of Dissolution.

——— Building Society. Register No. —.

Instrument of dissolution of the ——— Building Society made the ——— day of ———, pursuant to the Act 37 & 38 Vict. c. 42, s. 32, and signed by not less than three-fourths of the members holding not less than two-thirds of the number of shares in the said society.

It is agreed and declared as follows:—

1. The liabilities and assets of the society are the following [*here set them forth in detail.*]
2. The number of members is ———, the number of shares is ———, the amount standing to the credit of the members in the books of the society is ———.
3. The society owes to depositors the sum of ———, and to other creditors the sum of ———, and such sums shall be paid out of the first moneys which shall be received by the trustees hereby appointed [*or as the case may be*].
4. After payment of the claims of depositors and other creditors, the funds and property of the society shall be appropriated and divided among the members thereof in the proportion of the amount stand-

ing to each member's credit in the books of the society [*or as the case may be*].

5. *A.*, *B.*, and *C.* [*giving full names, addresses, and descriptions*], are hereby appointed trustees for the special purpose of the dissolution, and shall be remunerated by the sum of £——— [*or as the case may be*].

[*Here insert any other provisions the society desires to make as to the dissolution.*]

Number of shares held by members signing.

Signatures of members.

Signatures of trustees.

(Common seal of the society.)

The seal must be applied and witnessed in the manner directed by the rules of the society.

FORM N.

Building Societies Acts.

Declaration to accompany Instrument of Dissolution.

——— Building Society. Register No. —.

I, ———, of ———, an officer of the above-named society, do solemnly and sincerely declare that the instrument of dissolution* appended to this declaration is signed by not less than three-fourths of the members, holding not less than two-thirds of the number of shares in the said society.

* [*or* the alteration of the instrument of dissolution.]

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Taken and received before me, one of Her Majesty's justices of the peace for the said county of ———, in the said county, this ——— day of ———, 18—.

APPENDIX B.

FORM O.

Building Societies Acts.

Certificate of Registration of Instrument of Dissolution.

The Registrar of Building Societies in [England, Scotland, *or* Ireland] hereby certifies that the foregoing instrument of dissolution* of the ——— Building Society, established at ———, in the county of ———, is registered under the Building Societies Acts.

* [*or* alteration of the instrument of dissolution.]

This ——— day of ———, 18—.

[*To be authenticated as provided by Regulation* 26.]

FORM P.

Building Societies Acts.

Notice of Commencement of Dissolution where no Instrument of Dissolution is executed.

To be given within 14 days.

——— Building Society. Register No. ———.

To the Registrar of Building Societies,
28, Abingdon Street, Westminster.

Notice is hereby given, that, in pursuance of the rules of the above-mentioned society, *or* of a resolution duly passed in pursuance of the rules of the society on the ——— day of ———,

The dissolution of the society commenced on the ——— day of ———.

(Seal of society.)

The seal must be applied and witnessed in the manner directed by the rules of the society.

Name and address to which registered copy is to be sent.

Date ———, 18—.

FORM P *a*.

Building Societies Acts.

Notice of Commencement of Winding up.

To be given within 14 days of order of Court.

——— Building Society. Register No. —.

To the Registrar of Building Societies,
28, Abingdon Street, Westminster.

Notice is hereby given that the voluntary winding up, subject to the supervision of the Court, *or* the winding up by the Court, of the above-mentioned society commenced on the ——— day of ———.

(Seal of the society.)

The seal must be applied and witnessed in the manner directed by the rules of the society.

Name and address to which registered copy is to be sent. }

Date ———, 18—.

———

FORM Q.

Building Societies Acts.

Notice of Termination of Dissolution.

To be given within 14 days.

——— Building Society. Register No. —.

To the Registrar of Building Societies,
28, Abingdon Street, Westminster.

Notice is hereby given, that, pursuant to the instrument of dissolution [*or* rules, *as the case may be*] of the above-mentioned society, the dissolution thereof terminated on the ——— day of ———.

——— } The trustees for the purpose
——— } of the dissolution.
——— } [*or*, three members and the
——— } secretary if the dissolution is not by instrument.]

Name and address to which registered copy is to be sent. } ———

Date ———, 18—.

APPENDIX B.

FORM Q *a*.

Building Societies Acts.

Notice of Termination of Winding up.

To be given within 14 days.

——— Building Society. Register No. —.

To the Registrar of Building Societies,
28, Abingdon Street, Westminster.

Notice is hereby given that the voluntary winding up, subject to the supervision of the Court, *or* the winding up by the Court, of the above society, terminated on the ——— day of ———.

———
———
——— } Liquidator *or* liquidators.
or
Official liquidator *or* liquidators.

Name and address to which registered copy is to be sent. } ———

Date ———, 18—.

FORM R.

Building Societies Acts.

Notice of Union of Societies.

(*A*)——— Building Society. Register No. —.
(*B*)——— Building Society. Register No. —.

To the Registrar of Building Societies,
28, Abingdon Street, Westminster.

Notice is hereby given, that at a general meeting convened for the purpose and held pursuant to 37 & 38 Vict. c. 42, s. 33, on the ——— day of ———, 18—, the (*A*)——— Building Society above mentioned, passed by three-fourths of the members, holding not less than two-thirds of the whole number of shares, present at such

meeting, the following resolution to unite with the (*B*)——— Building Society:—

[*Here give the words of the resolution as passed.*]

And that at a general meeting convened for the purpose and held pursuant to 37 & 38 Vict. c. 42, s. 33, on the ——— day of ———, 18—, the said (*B*)——— Building Society passed, by three-fourths of the members, holding not less than two-thirds of the whole number of shares, present at such meeting, the following resolution to unite with the said (*A*)——— Building Society:—

[*Here give the words of the resolution as passed.*]

And that the following are the terms of the said union:—[*State the terms.*]

And that it is intended that the united societies shall henceforth be called the ——— Building Society.

Accompanying this notice is a copy of the rules intended to be henceforth adopted by the united society [which are the rules of the ——— Building Society].

(Seal of the (*A*) Building Society.)
(Seal of the (*B*) Building Society.)

The seals must be applied and witnessed in the manner directed by the rules of the societies respectively.

Name and address to which registered copy is to be sent. }———

Date ———, 18—.

Form S.

Building Societies Acts.

Notice of Transfer of Engagements.

——— Building Society. Register No. —.

To the Registrar of Building Societies,
28, Abingdon Street, Westminster.

Notice is hereby given, that at a general meeting convened for the purpose and held pursuant to 37 & 38 Vict. c. 42, s. 33, on the ——— day of ———, 18—, the above-

APPENDIX B.

mentioned society resolved, by three-fourths of the members, holding not less than two-thirds of the whole number of shares, present at such meeting, to transfer its engagements to the ——— Building Society, Register No. —.

And that at a general meeting convened for the purpose and held pursuant to 37 & 38 Vict. c. 42, s. 33, on the ——— day of ———, 18—, the said [*Transferee*] Building Society resolved by three-fourths of the members, holding not less than two-thirds of the whole number of shares, present at such meeting, to accept such transfer and to undertake the engagements of the said [*Transferor*] Building Society.

And that the following are the terms of the said transfer: [*State the terms,*]

The seals must be applied and witnessed in the manner directed by the rules of the societies respectively.

(Seal of the Transferor Society.)
(Seal of the Transferee Society.)

Name and address to which registered copy is to be sent. }———

Date ———, 18—.

FORM T.

Building Societies Acts.

Submission of a Dispute.

Dispute between ——— and the ——— Building Society. Register No. —.

The part within brackets is not necessary where the rules direct disputes to be referred to the registrar.

[The above-named parties agree to submit the dispute between them to the Registrar.

——— Signature of Claimant. (Seal of Society.)]

The said ——— submits as follows:—

1. That he is a member of the said Society [*or* claims by or through a member, or under the rules, [*as the case may be*].

2. That ——— [*give particulars of the claim or contention*].

3. That his case is proposed to be supported by the evidence of the following witnesses, and by the production of the following documents :— [*give list*].

Signature ———.

Address ———.

Date ——— 18—.

The said society submit as follows :—

1. That they dispute the claim [*or* contention] of the said ——— on the following grounds :— [*state grounds of dispute*].
2. That their case is proposed to be supported by the evidence of the following witnesses, and the production of the following documents :— [*give list*].

(Seal of Society.)

Date ———, 18—.

The seal must be applied and witnessed in the manner directed by the rules of the society.

Form V.

Building Societies Acts.

Notice of Hearing.

Dispute between ——— and the ——— Building Society.

Take notice, that the Registrar of Building Societies will proceed to hear and determine the matter in dispute, which has been referred to the Registrar pursuant to the said Acts on ——— the ——— day of ——— next, at ——— o'clock, at 28, Abingdon Street, Westminster [*or as the case may be*].

Dated ——— day of ———, 18—.

[*To be authenticated as provided by Regulation* 26.]

APPENDIX B.

FORM W.

Building Societies Acts.

Award of Registrar.

In the matter of a dispute between ——— and the ——— Building Society, Register No. —, referred to the Registrar pursuant to the above-mentioned Acts.

The Registrar of Building Societies in England [Scotland *or* Ireland] awards as follows :— [*here state the terms of the award*].

——— day of ———, 18—.

[*To be authenticated as provided by Regulation* 26.]

FORM X.

Building Societies Acts.

Order for Discovery.

In the matter of a dispute between ——— and the ——— Building Society, Register No. —, referred to me pursuant to the above-mentioned Acts.

The Registrar of Building Societies in England [Scotland *or* Ireland] orders and directs as follows :—

1. That, within fourteen days from the service of this order, the said ——— [*society or name of party*] do deposit at [*state where*] for inspection by the parties the following documents :—[*state the documents*].
2. That on the ——— day of ——— next, at ——— o'clock, ——— [*an officer of the society] do appear at the place above named, and make discovery of all things within his knowledge [*as such officer] relative to the following matters :—[*state the matters as to which discovery is granted*].

* These words will be omitted if the discovery is to be made by the other party to the dispute.

Date ——— day of ———.

[*To be authenticated as provided by Regulation* 26.]

Form Y.

Building Societies Acts.

Notice of change of Chief Office.

——— Building Society. Register No. —.

To the Registrar of Building Societies in England.

Notice is hereby given that the Registered Chief Office of the ——— Building Society, established at *———, in the county of ———, is changed to the office or place following: ———, ———.

* State present Registered Chief Office.

Date ———, 18 —. *Secretary.*

APPENDIX C.

ACT OF SEDERUNT

Regulating the Proceedings in Liquidations in the Sheriff Courts of Scotland, under the Building Societies Act, 1874.

EDINBURGH, 17*th March*, 1882.

WHEREAS by the Building Societies Act, 1874, 37 & 38 Vict. c. 42, s. 32, sub-s. 4, it is enacted that a society under the said Act may terminate or be dissolved "by winding up either voluntarily under the supervision of the Court, or by the Court, if the Court shall so order, on the petition of any member authorized by three-fourths of the members present at a general meeting of the society specially called for the purpose to present the same on behalf of the society, or on the petition of any judgment creditor for not less than fifty pounds, but not otherwise;" and that "general orders for regulating the proceedings of the Court under this section may be from time to time made by the authority for the time being empowered to make general orders for the Court:"

And whereas, by sect. 4 of the said statute, it is enacted that the Court in this Act means:—

"In England the County Court of the district in which he chief office or place of meeting for the business of the society is situate; in Scotland the Sheriff's Court of the county in which such office or place of meeting is situate:"

The Lords enact and ordain as follows:—

1. All applications presented to the Court for the winding up of a society registered under the said Act, either voluntarily under the supervision of the Sheriff's Court, or by the Court, shall be by petition, in form as nearly as may be of petitions under the Act 39 & 40 Vict. c. 70 (Sheriff Court Act, 1876), and the Court shall order service and advertisement thereof in the *Edinburgh Gazette*, and such further advertisement if any as the Court may consider necessary, and shall appoint the said petition to be heard on such early day as may be suitable.

2. The said petition shall be printed, and every shareholder and creditor of the company shall be entitled to receive from the solicitor of the petitioner a copy thereof on demand at his office.

3. The Court on the day appointed may hear the petitioner's proof in support of the petition, and may also hear any parties interested in support thereof or in opposition thereto, and also any application which may follow thereon in the course of the winding up, either in open Court, or in chambers, and may order such answers as may be deemed necessary; and may adjourn the hearing; and after such inquiry, by proof or otherwise, as may be deemed necessary, the Court may order the society to be wound up, or may dismiss the petition, or may make such other order as may be just.

4. The Court may, as to all matters relating to the winding up, have regard to the wishes of the creditors or members, as proved by sufficient evidence; and may direct meetings of the creditors or members to be summoned, held, and conducted in such manner as may be directed, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court. In the case of creditors regard is to be had to the value of the debt due to each creditor; and in the case of

APPENDIX C.

members, to the number of votes conferred on each member by the regulations of the society, or, failing such regulations, to the number of shares held by each member.

5. For the purpose of winding up a society, a liquidator shall be appointed. The shareholders may nominate a liquidator at any meeting held by them, and called in terms of the 32nd section of the statute 37 & 38 Vict. cap. 42, for the purpose of resolving to wind up the society under supervision of the Court, and of presenting a petition to the Court to that effect; and the Court shall confirm the nomination so made, unless sufficient cause to the contrary be shown. If the Court do not confirm the nomination, or if no such nomination has been made before the presenting of the petition, the Court shall, at the hearing of the said petition, or at any subsequent time, nominate a liquidator either provisionally or otherwise. In the case of winding up by the Court, the liquidator shall be nominated by the Court. The Court may also determine whether any and what security shall be given by the liquidator; and every appointment of a liquidator shall be advertised in such manner as the Court may appoint.

6. Any liquidator may resign; or may be removed by the Court on due cause shown; and any vacancy in the office of a liquidator shall be filled up by the Court. There shall be paid to the liquidator such salary or remuneration by way of percentage or otherwise as the Court may direct.

7. When in course of winding up the society it shall be necessary to carry on the business thereof for a time, or to make up titles to heritable property, or to compromise claims with contributories, these powers shall only be exercised with the sanction of the Court, obtained upon a note presented to the Court setting forth the grounds upon which the powers are asked for. The Court may, on the presentation of such note, order such intimation thereof as shall be deemed suitable and expedient in the circum-

stances. And further, it shall be competent to the liquidator to apply to the Court for instruction and direction in regard to any matter wherein, in his judgment, such instruction and direction are necessary.

8. The liquidator shall have power to appoint a law agent to assist him in the performance of his duties, and also with sanction of the Court to appoint a factor for taking charge of or managing any of the properties of the society.

9. Where a society is being wound up voluntarily under the supervision of the Court, the liquidator may from time to time during the continuance of such winding up call general meetings of the members of the society; and in the event of the winding up continuing for more than one year the liquidator shall call a general meeting of the members at the end of the first year, and of each succeeding year from the commencement of the winding up, or as soon thereafter as may be convenient, and shall lay before such meeting an account showing his acts and dealings, and the manner in which the winding up has been conducted during the preceding year.

10. The liquidator shall, as soon as may be after an order is made for winding up a society, make up and lodge in process a state showing—

(1) The liabilities and assets of the society in detail.

(2) The number of members and the amounts standing to their credit in the books of the society.

(3) The liabilities of members of the society in terms of sects. 13 and 14 of the Building Societies Act and of the rules of the society.

(4) The claims of depositors and other creditors and the provision to be made for their payment.

(5) The sums to be repaid to the members, if any, after payment of the debts due by the society.

And such state may be objected to by any person having interest, and may be amended from time to time. And

APPENDIX C.

the Court may, after such notice or advertisement as may be thought proper, and after hearing any party or parties, sanction and approve of such state, or disapprove thereof, and if the same be sanctioned and approved of, the Court may authorize the funds to be distributed in terms of such state; and thereafter, on being satisfied that payment has been made to the creditors of the society and depositors so far as possible, and to the members of the society in terms of the said state, or when any sum or sums payable to any member or members of the society have not been claimed, that such consignation thereof has been made by the liquidator as the Court may direct, the Court shall declare the winding up of the said society to be at an end, and the society dissolved, discharge the liquidator of his whole actings and intromissions, and appoint his bond of caution, if any, to be delivered up.

11. The accounts of the liquidator shall be audited annually. The audit shall be made by such person as the Court may select, whether he be an auditor of Court or not, and the auditor shall report to the Court the audit so made. If it shall appear to the auditor that any payment by the liquidator should be disallowed, or that any charge has been incurred, as against the estate, which was unnecessary, or that any sum ought to have been, but is not brought into account, he shall, in his report, bring the same under the notice of the Court, setting forth the grounds of his opinion, and the Court shall pronounce judgment upon the matter so reported upon as may seem just.

12. The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the society of the costs, charges, and expenses incurred in winding up the society in such order of priority as may be considered just.

13. The liquidator shall lodge all money received by him on account of the society in one of the banks in Scot-

land established by Act of Parliament or Royal Charter, in a separate account or on deposit, in his name as such liquidator, within seven days after the receipt thereof, unless the Court has otherwise directed. If the liquidator shall keep in his hands more than 50*l.* of money belonging to the society for more than seven days he shall be charged in his account with a sum at the rate of twenty per cent. per annum on the excess of the said sum of 50*l.* for such time as it shall be in his hands beyond the said seven days, and the Court may, in respect of any such retention, disallow the salary or remuneration of such liquidator, or may remove him from his office.

14. In every case where the Court shall order service, such service may be made by registered letter if the Court authorize it.

And the lords appoint this Act to be inserted in the Books of Sederunt, and to be published in common form.

JOHN INGLIS, *I.P.D.*

APPENDIX D.

The STATUTES relating to UNINCORPORATED SOCIETIES.

6 & 7 Will. 4, c. 32.

An Act for the Regulation of Benefit Building Societies.

[14th July, 1836.]

Whereas certain societies commonly called building societies have been established in different parts of the kingdom, principally amongst the industrious* classes, for the purpose of raising by small periodical subscriptions a fund to assist the members thereof in obtaining a small freehold or leasehold property, and it is expedient to afford encouragement and protection to such societies and the property obtained therewith: Be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That it shall and may be lawful for any number of persons in Great Britain and Ireland to form themselves into and establish societies for the purpose of raising, by the monthly or other subscriptions of the several members of such societies, shares not exceeding the value of one hundred and fifty pounds for each share, such subscriptions not to exceed in the whole twenty shillings

* *Sic.*

Societies may be established for the purchase or erection of dwelling houses.

per month for each share, a stock or fund for the purpose of enabling each member thereof to receive out of the funds of such society the amount or value of his or her share or shares therein, to erect or purchase one or more dwelling-house or dwelling-houses, or other real or leasehold estate to be secured by way of mortgage to such society until the amount or value of his or her shares shall have been fully repaid to such society with the interest thereon, and all fines or other payments incurred in respect thereof, and to and for the several members of each society from time to time to assemble together, and to make, ordain, and constitute such proper and wholesome rules and regulations for the government and guidance of the same as to the major part of the members of such society so assembled together shall seem meet, so as such rules shall not be repugnant to the express provisions of this Act and to the general laws of the realm, and to impose and inflict such reasonable fines, penalties, and forfeitures upon the several members of any such society who shall offend against any such rules, as the members may think fit, to be respectively paid to such uses for the benefit of such society as such society by such rules shall direct, and also from time to time to alter and amend such rules as occasion shall require, or annul or repeal the same, and to make new rules in lieu thereof, under such restrictions as are in this Act contained; provided that no member shall receive or be entitled to receive from the funds of such society any interest or dividend, by way of annual or other periodical profit upon any shares in such society, until the amount or value of his or her share shall have been realized, except on the withdrawal of such member, according to the rules of such society then in force.

Bonus, &c. not to be usurious.

2. And be it enacted, that it shall and may be lawful to and for any such society to have and receive from any

APPENDIX D.

member or members thereof any sum or sums of money, by way of bonus on any share or shares, for the privilege of receiving the same in advance prior to the same being realized, and also any interest for the share or shares so received or any part thereof, without being subject or liable on account thereof to any of the forfeitures or penalties imposed by any Act or Acts of Parliament relating to usury.

Rules may be made to provide forms of conveyance, &c.

3. And be it further enacted, that it shall and may be lawful to and for any such society, in and by the rules thereof, to describe the form or forms of conveyance, mortgage, transfer, agreement, bond, or other instrument which may be necessary for carrying the purposes of the said society into execution; and which shall be specified and set forth in a schedule to be annexed to the rules of such society, and duly certified and deposited as hereinafter provided.

Provisions of Friendly Society Acts of 10 Geo. 4, c. 56, and 4 & 5 Will. 4, c. 40, extended to this Act.

4. And be it further enacted, that all the provisions of a certain Act made and passed in the tenth year of the reign of his late Majesty King George the Fourth, intituled "An Act to consolidate and amend the Laws relating to Friendly Societies," and also the provisions of a certain other Act made and passed in the fourth and fifth years of the reign of his present Majesty King William the Fourth, intituled "An Act to amend an Act of the Tenth Year of his late Majesty King George the Fourth, to consolidate and amend the Laws relating to Friendly Societies," so far as the same, or any part thereof, may be applicable to the purpose of any benefit building society, and to the framing, certifying, enrolling, and altering the rules thereof, shall extend and apply to such benefit building society and the rules thereof in such and the same manner as if the provisions of the said Acts had been herein expressly re-enacted.

Receipt endorsed on mortgage to be sufficient discharge without reconveyance.

5. And be it further enacted, that it shall be lawful for the trustees named in any mortgage made on behalf of such societies, or the survivor or survivors of them, or for the trustees for the time being, to endorse upon any mortgage or further charge given by any member of such society to the trustees thereof for moneys advanced by such society to any member thereof, a receipt for all moneys intended to be secured by such mortgage or further charge, which shall be sufficient to vacate the same, and vest the estate of and in the property comprised in such security in the person or persons for the time being entitled to the equity of redemption, without it being necessary for the trustees of any such society to give any reconveyance of the property so mortgaged, which receipt shall be specified in a schedule to be annexed to the rules of such society, duly certified and deposited as aforesaid.

Not to authorize investment of funds in savings bank.

6. Provided always, and be it further enacted, that nothing herein contained shall authorize any benefit building society to invest its funds, or any part thereof, in any savings bank, or with the Commissioners for the Reduction of the National Debt.

Benefit of Act to extend to all societies established prior to June, 1836.

7. And be it further enacted, that all building societies established prior to the first day of June one thousand eight hundred and thirty-six shall be entitled to the protection and benefits of this Act, on their present rules being duly certified and deposited as directed by the said recited Acts; and no such society shall be entitled to the benefits of this Act until their rules shall have been so certified and deposited; and that no such society shall be required to alter in any manner the rules under which they are now respectively governed.

Exemption from stamp duties.

8. And be it further enacted, that no rules of any such society, or any copy thereof, nor any transfer of any share

APPENDIX D.

or shares in any such society, shall be subject or liable to or charged with any stamp duty or duties whatsoever.

Public Act.

9. And be it further enacted, that this Act shall be deemed a public Act, and shall extend to Great Britain, Ireland, and Berwick-upon-Tweed, and be judicially taken notice of as such by all judges, justices, and other persons whatsoever, without the same being specially shown or pleaded.

10 GEO. 4, c. 56.

An Act to consolidate and amend the Laws relating to Friendly Societies. [19th June, 1829.]

APPENDIX D.

[The following appear to be the provisions of the Act which apply to unincorporated building societies, and are still unrepealed; the words in brackets are the alterations introduced by the Building Societies Act, 1874.]

Societies, in their rules, to declare the purpose of their establishment, &c.

3. And be it further enacted that every such society so to be established as aforesaid . . . . shall, in or by one or more of the rules . . . . declare all and every the intents and purposes for which such society is intended to be established, and shall also in and by such rules direct all and every the uses and purposes to which the money which shall from time to time be subscribed, paid, or given to or for the use or benefit of such society, or which shall arise therefrom, or in anywise shall belong to such society, shall be appropriated and applied, and in what shares and proportions and under what circumstances any member of such society, or other person, shall or may become entitled to the same or any part thereof; provided that the application thereof shall not in anywise be repugnant to the uses, intents, and purposes of such society, or any of them, so to be declared as aforesaid; and all such rules, during the continuance of the same, shall be complied with and enforced; and the moneys so subscribed, paid, or given, or so arising, to or for the use or benefit of such society, or belonging thereto, shall not be diverted or misapplied either by the treasurer, trustee, or any other officer or member of such society entrusted therewith, under such penalty or forfeiture as such society shall by any rule impose and inflict for such offence.

APPENDIX D.

Manner of proceeding in case barrister shall refuse to certify.

5. Provided always, and be it further enacted, that in case any such [registrar] shall refuse to certify all or any of the rules so to be submitted for his perusal and examination, it shall then be lawful for any such society to submit the same to the Court of Quarter Sessions, together with the reasons assigned by the said [registrar] in writing, for any such rejection or disapproval of any one or more such rules; and that the justices at their said Quarter Sessions shall and may, if they think fit, confirm and allow the same, notwithstanding any such rejection or disapproval by any such [registrar].

No society entitled to the benefit of this Act unless their rules have been confirmed.

7. And be it further enacted, that no such society as aforesaid shall have the benefit of this Act, unless all the rules for the management thereof shall be entered in a book to be kept by an officer of such society appointed for that purpose, and which book shall be open at all seasonable times for the inspection of the members of such society . . . .; but nevertheless nothing contained herein shall extend to prevent any alteration in or amendment of any such rules so entered . . . . as aforesaid, or repealing or annulling the same, or any of them, in the whole or in part, or making any new rules for the management of such society, in such manner as by the rules of such society shall from time to time be provided; but such new rules, or such alterations in or amendments of former rules, or any order annulling or repealing any former rules in the whole or in part, shall not be in force until the same respectively shall be entered in such book as aforesaid, and certified, when necessary, by such [registrar] as aforesaid. . . . .

Rules, when entered and deposited, to be binding on members and depositors.

8. And be it further enacted, that all rules from time to time made and in force for the management of such society as aforesaid, and duly entered in such book as aforesaid, ... shall be binding on the several members and officers of such society, and the several contributors

thereto, and their representatives, all of whom shall be deemed and taken to have full notice thereof by such entry and contribution as aforesaid; and the entry of such rules in such book as aforesaid, or the transcript thereof, ... or a true copy of such transcript, examined with the original and proved to be a true copy, shall be received as evidence of such rules respectively in all cases; and no certiorari, suspension, advocation, reduction, or other legal process shall be brought or allowed to remove any such rules into any of his Majesty's Courts of Record; and every copy of any such transcript . . . . shall be made without fee or reward, except the actual expense of making such copy.

Copy of transcript to be received in evidence.

9. And be it further enacted, that no rule . . . . shall be altered, rescinded, or repealed, unless at a general meeting of the members of such society as aforesaid, convened by public notice, written or printed, signed by the secretary or president or other principal officer or clerk of such society, in pursuance of a requisition for that purpose by seven or more of the members of such society, which said requisition and notice shall be publicly read at the two usual meetings of such society to be held next before such general meeting for the purpose of such alteration or repeal, unless a committee of such members shall have been nominated for that purpose at a general meeting of the members of such society convened in manner aforesaid, in which case such committee shall have the like power to make such alterations or repeal, and unless such alterations or repeal shall be made with the concurrence and approbation of three-fourths of the members of such society then and there present, or by the like proportion of such committee as aforesaid, if any shall have been nominated for that purpose.

No confirmed rule to be altered but at a general meeting of the society, &c.

10. And be it further enacted, that the rules of every society formed under the authority of this Act shall specify

Rules shall specify place of meeting

APPENDIX D.

and duties of officers.

the place or places at which it is intended such society shall hold its meetings, and shall contain provisions with respect to the powers and duties of the members at large, and of such committees or officers as may be appointed for the management of the affairs of such society: provided always, that it shall and may be lawful for any such society to alter their place or places of meeting whenever they may consider it necessary, upon giving notice thereof in writing to the [registrar], the said notice to be given within seven days before or after such removal, and signed by the secretary or other principal officer, and also by three or more of the members of the said society; and provided that the place or places at which such society intend to hold their meetings shall be situate within the county in which the rules of the said society are enrolled.

Societies may alter place of meeting.

Society may appoint officers.

11. And be it further enacted, that every such society shall and may from time to time, at any of their usual meetings, or by their committee, if any such shall be appointed for that society, elect and appoint such person into the office of steward, president, warden, treasurer, or trustee of such society, as they shall think proper, and also shall and may from time to time elect and appoint such clerks and other officers as shall be deemed necessary to carry into execution the purposes of such society, for such space of time and for such purposes as shall be fixed and established by the rules of such society, and from time to time to elect and appoint others in the room of those who shall vacate or die; and such treasurer, trustee, and all and every other officer or other person whatever who shall be appointed to any office in anywise touching or concerning the receipt, management, or expenditure of any sum of money collected for the purpose of any such society, before he, she, or they shall be admitted to take upon him, her, or them the execution of any such office or trust, (if required so to do by the rules of such society to which such officer shall belong,)

Securities to be given for offices of trust if required.

shall become bound in a bond, acccording to the form* prescribed in the schedule to this Act annexed, with two sufficient sureties, for the just and faithful execution of such office or trust, and for rendering a just and true account according to the rules of such society, and in all matters lawful to pay obedience to the same, in such penal sum of money as by the major part of such society at any such meeting as aforesaid shall be thought expedient, and to the satisfaction of such society; and that every such bond to be given by or on the behalf of such treasurer or trustee, or of any other person appointed to any other office or trust, shall be given to the clerk of the peace of the county where such society shall be established, for the time being, without fee or reward; and in case of forfeiture it shall be lawful to sue upon such bond in the name of the clerk of the peace for the time being, for the use of the said society, fully indemnifying and saving harmless such clerk of the peace from all costs and charges in respect of such suit; provided that such bond shall have in Scotland the same force and effect as a bond in the form in use in Scotland containing a clause of registration.

* See *ante*, p. 109.

Treasurer or trustees to give bond to the clerk of the peace.

12. And be it further enacted, that every such society shall and may from time to time elect and appoint any number of the members of such society to be a committee, the number thereof to be declared in the rules of every such society, and shall and may delegate to such committee all or any of the powers given by this Act to be executed, who, being so delegated, shall continue to act as such committee, for and during such time as they shall be appointed, for such society, for general purposes, the powers of such committee being first declared in and by the rules of such society, ... and in all cases where a committee shall be appointed for any particular purpose, the powers delegated to such committee shall be reduced into writing and entered into a book by the secretary or clerk of such society, and a

Appointment of committees.

Powers of standing committees to be declared in the rules of the society, and of particular ones entered in a book.

APPENDIX D.

majority of the members of such committee shall at all times be necessary to concur in any act of such committee; and such committee shall, in all things delegated to them, act for and in the name of such society; and all acts and orders of such committee, under the powers delegated to them, shall have the like force and effect as the acts and orders of such society at any general meeting thereof could or might have had in pursuance of this Act: Provided always, that the transactions of such committee shall be entered in a book belonging to such society, and shall be from time to time and at all times subject and liable to the review, allowance or disallowance and control of such society, in such manner and form as such society shall by their general rules . . . have directed and appointed, or shall in like manner direct and appoint.

Committee controllable by society.

Treasurer or trustees to lay out surplus of contributions;

13. And be it further enacted, that it shall and may be lawful to and for the treasurer or trustee for the time being of any such society, and he, she, and they is and are hereby authorized and required, from time to time, by and with the consent of such society, to be had and testified in such manner as shall be directed by the general rules of such society, to lay out or dispose of such part of all such sums of money as shall at any time be collected, given, or paid to and for the beneficial ends, intents, and purposes of such society, as the exigencies of such society shall not call for the immediate application or expenditure of, either on real or heritable securities or heritable property, to be approved of as aforesaid, (such securities to be taken in the name of such treasurer or trustee for the time being,) or to invest the same in the public stocks or funds, ... or government securities, or in any of the chartered banks in Scotland, or in the bank of the Commercial Banking Company of Scotland, and not otherwise, in the proper name of such treasurer or trustee; and from time to time, with such consent as aforesaid, to alter and transfer such securities and

funds, and to make sale thereof respectively; and that all the dividends, interests, and proceeds which shall from time to time arise from the moneys so laid out or invested as aforesaid shall from time to time be brought to account by such treasurer or trustee, and shall be applied to and for the use of such society, according to the rules thereof.

and to bring the proceeds to account.

14. And be it further enacted, that every person who shall have, or receive any part of the moneys, effects, or funds of or belonging to any such society, or shall in any manner have been or shall be entrusted with the disposal, management, or custody thereof, or of any securities, books, papers or property relating to the same, his or her executors, administrators and assigns respectively, shall, upon demand made, or notice in writing given or left at the last or usual place of residence of such persons, in pursuance of any order of such society, or committee to be appointed as aforesaid for that purpose, give in his or her account at the usual meeting of such society, or to such committee thereof as aforesaid, to be examined and allowed or disallowed by such society or committee thereof, and shall, on the like demand or notice, pay over all the moneys remaining in his or her hands, and assign and transfer or deliver all securities and effects, books, papers, and property, taken or standing in his or her name as aforesaid, or being in his or her hands or custody, to the treasurer or trustee for the time being, or to such other person as such society or committee thereof shall appoint; and in case of any neglect or refusal to deliver such account, or to pay over such moneys, or to assign, transfer or deliver such securities and effects, books, papers and property, in manner aforesaid, it shall and may be lawful to and for every such society, in the name of the treasurer or trustee or other principal officer thereof, as the case may be, to exhibit a petition in the Court of Exchequer in England or Ireland, or in the Court of Session in Scotland, or the Courts of Great Session in

Treasurers, &c., to render accounts, and pay over balances, &c.;

and in case of neglect, application may be made to the Court of Exchequer, &c.

APPENDIX D.

Wales respectively, who shall and may proceed thereupon in a summary way, and make such order therein, upon hearing all parties concerned, as to such Court in their discretion shall seem just, which order shall be final and conclusive; and all assignments, sales, and transfers made in pursuance of such order shall be good and effectual in law to all intents and purposes whatsoever.

Where trustees, &c., are out of jurisdiction of Court, or it be uncertain whether they are alive, or they refuse to convey, &c., Court of Exchequer may appoint a person to convey.

15. And be it further enacted, that when and so often as any person seised or possessed of any lands, tenements, or hereditaments, or other property, or any estate or interest therein, as a trustee of any such society, shall be out of the jurisdiction of or not amenable to the process of the Court of Exchequer in England or Ireland, or the Court of Session in Scotland, or of the Court of Great Sessions in Wales, or shall be idiot, lunatic, or of unsound mind, or it shall be unknown or uncertain whether he or she be living or dead, or such person shall refuse to convey or otherwise assure such lands, tenements, hereditaments, or property, or estate or interest, to the person duly nominated as trustee of such society in their stead, either alone or together with any continuing trustee, as occasion shall require, then and in every or any such case it shall be lawful for the judges of the said Courts respectively to appoint such person, as to such Court shall seem meet, on behalf and in the name of the person seised or possessed as aforesaid, to convey, surrender, release, assign, or otherwise assure the said lands, tenements, hereditaments, or property, or estate or interest, to such trustee so duly nominated as aforesaid; and every such conveyance, release, surrender, assignment, or assurance shall be as valid and effectual to all intents and purposes as if the person being out of the jurisdiction or not amenable to the process of the said Courts, or not known to be alive, or having refused, or as if the person being idiot, lunatic, or of unsound mind, had been at the time of the execution thereof of sane mind, memory, and

understanding, and had by himself or herself executed the same.

When trustees shall be absent, &c., Courts may order stock to be transferred and dividends paid.

16. And be it further enacted, that when and as often as it shall happen that all and every person in whose name any part of the several stocks, annuities and funds transferable, or which hereafter shall be made transferable at the Bank of England, or in the books of the Governor and Company of the Bank of England, is, are, or shall be standing as a trustee of any such society, shall be absent, out of the jurisdiction or not amenable to the process of the said Court of Exchequer in England or Ireland, or the Court of Session in Scotland, or the Courts of Great Session in Wales, or shall be a bankrupt, insolvent or lunatic, or it shall be uncertain or unknown whether such trustee is living or dead, that then and in such case it shall and may be lawful to and for the judges of the said Courts respectively to order and direct that the accountant general, or the secretary or deputy secretary, or other proper officer for the time being of the Governor and Company of the Bank of England, do transfer in the book of the said company such stock, annuities or funds standing as aforesaid, to and into the name of such person as such society may appoint, and also pay over to such person as aforesaid the dividends of such stock, annuities, or funds; and when and as often as it shall happen that one or more only, and not all or both of such trustees as aforesaid, shall be so absent, or not amenable to such process as aforesaid, or a bankrupt, insolvent or lunatic, or it be uncertain or unknown whether any one or more of such trustees is or are living or dead, that then and in all and every such last-mentioned case and cases, it shall and may be lawful to and for the judges of the said Courts respectively to order and direct that the other and others of such trustees who shall be forthcoming and ready and qualified to act do transfer such stock, annuities or funds to and into the

APPENDIX D.

name of such person as aforesaid, and also that such forthcoming trustee do also receive and pay over the dividends of such stock, annuities or funds as such society shall direct; and that all such transfers and payments so made shall be and are hereby declared to be valid and effectual to all intents and purposes whatsoever, any former statute, law, usage or custom to the contrary thereof in anywise notwithstanding.

* *Sic.*

No fee to be taken for any proceeding in such Courts, &c.

17. And be* further enacted, that no fee, reward emolument, or gratuity whatsoever shall be demanded, taken or received by any officer or minister of such Courts for any matter or thing done in such Courts in pursuance of this Act; and that upon the presenting of any such petition it shall be lawful for the judges of the said Courts respectively to assign counsel learned in the law, and to appoint a clerk or practitioner of such Court, to advise and carry on such petition on the behalf of such society, who are hereby respectively required to do their duties therein without fee or reward.

Who shall be named in the orders of the Court for making transfers.

18. Provided always, and be it further enacted, that in all cases in which orders shall be made by any of the Courts aforesaid for the transfer of stocks or funds transferable at the Bank of England the persons to be named in such orders respectively for making such transfers shall be the secretary, deputy secretary, or accountant-general of the Governor and Company of the Bank of England for the time being, or one of them, except in cases where one or more of the trustees in whose name such stocks or funds shall stand shall be ordered to transfer the same without the concurrence of any other or others of such trustees, anything herein contained to the contrary thereof in anywise notwithstanding.

Act to be an indemnity to the Bank.

19. And be it further enacted, that this Act shall be and is hereby declared to be a full and complete indemnity and discharge to the Governor and Company of the Bank

of England, and their officers and servants, for all acts and things done or permitted to be done pursuant thereto, and that such acts and things shall not be questioned or impeached in any court of law or equity to their prejudice or detriment.

Effects of societies to be vested in the trustees or treasurers for the time being, who may bring and defend actions, &c.

21. And be it further enacted, that all real and heritable property, moneys, goods, chattels, and effects whatever, and all titles, securities for money, or other obligatory instruments and evidences or muniments, and all other effects whatever, and all rights or claims belonging to or had by such society, shall be vested in the treasurer or trustee of such society for the time being, for the use and benefit of such society and the respective members thereof, their respective executors or administrators, according to their respective claims and interests, and after the death or removal of any treasurer or trustee shall vest in the succeeding treasurer or trustee, for the same estate and interest as the former treasurer or trustee had therein, and subject to the same trusts, without any assignment or conveyance whatever, except the transfer of stocks and securities in the public funds of Great Britain and Ireland, and also shall, for all purposes of action or suit, as well criminal as civil, in law or in equity, in anywise touching or concerning the same, be deemed and taken to be, and shall in every such proceeding (where necessary) be stated to be, the property of the person appointed to the office of treasurer or trustee of such society for the time being, in his or her proper name, without further description; and such person shall and he or she is hereby respectively authorized to bring or defend, or cause to be brought or defended, any action, suit, or prosecution, criminal as well as civil, in law or in equity, touching or concerning the property, right, or claim aforesaid of or belonging to or had by such society, provided such person shall have been thereunto duly authorized by the consent of the majority of members present at any

APPENDIX D.

meeting of the society or committee thereof, and such person so appointed shall and may, in all cases concerning the property, right, or claim aforesaid of such society, sue and be sued, plead and be impleaded, in his or her proper name, as treasurer or trustee of such society, without other description; and no such suit, action, or prosecution shall be discontinued or abate by the death of such person, or his or her removal from the office of treasurer or trustee, but the same shall and may be proceeded in by the succeeding treasurer or trustee in the proper name of the person commencing the same, any law, usage, or custom to the contrary notwithstanding; and such succeeding treasurer or trustee shall pay or receive like costs as if the action or suit had been commenced in his or her name, for the benefit of or to be reimbursed from the funds of such society.

Limitation of responsibility of treasurers or trustees.

22. And be it further enacted, that the treasurer or trustee, or any other officer of any society established under the authority of this Act, shall not be liable to make good any deficiency which may arise in the funds of such society, unless such persons shall have respectively declared by writing under their hands, deposited and registered in like manner with the rules of such society, that they are willing so to be answerable; and it shall be lawful for each of such persons, or for such persons collectively, to limit his, her, or their responsibility to such sum as shall be specified in any such instrument or writing: provided always, that the said treasurer, trustee, and every other the officer of any such society, shall be and they are hereby declared to be personally responsible and liable for all moneys actually received by him, her, or them on account of or to and for the use of the said society.

Treasurer, &c., liable for money actually received.

Payment to persons appearing to be next of kin

23. And be it further enacted, that whenever the trustees of any society established under this Act, at any time after the decease of any member, have paid and divided

any sum of money to or amongst any person or persons who shall at the time of such payment appear to such trustees to be entitled to the effects of any deceased intestate member, the payment of any such sum or sums of money shall be valid and effectual with respect to any demand of any other person or persons as next of kin of such deceased intestate member, or as the lawful representative or representatives of such member, against the funds of such society or against the trustees thereof; but nevertheless such next of kin or representatives shall have remedy for such money so paid as aforesaid against the person or persons who shall have received the same.

declared valid.

24. And be it further enacted, that in case any member of any society shall die, who shall be entitled to any sum not exceeding twenty pounds, it shall be lawful for the trustees or treasurer of such society, and they are hereby authorized and permitted, if such trustees or treasurer shall be satisfied that no will was made and left by such deceased member, and that no letters of administration or confirmation will be taken out, of the funds, goods, and chattels of such depositor, to pay the same at any time after the decease of such member according to the rules and regulations of the said institution, and in the event of there being no rules and regulations made in that behalf, then the said trustees or treasurer are hereby authorized and permitted to pay and divide the same to and amongst the person or persons entitled to the effects of the deceased intestate, and that without administration in England or Ireland, and without confirmation in Scotland.

For payment of sums not exceeding 20*l.* where members die intestate.

25. And be it further enacted, that for the more effectually preventing fraud and imposition on the funds of such societies, if any officer, member, or any other person being or representing himself or herself to be a member of such society, or the nominee, executor, administrator, or assignee of any member of such society, or any other per-

Justices may hear cases of fraud, and punish by fine or imprisonment.

APPENDIX D.

son whatever, shall in or by any false representation or imposition fraudulently obtain possession of the moneys of such society or any part thereof, or, having in his or her possession any sum of money belonging to such society, shall fraudulently withhold the same, and for which offence no especial provision is made in the rules of such society, it shall be lawful for any one justice of the peace residing within the county within which such society shall be held, upon complaint made on oath or affirmation by an officer of such society appointed for that purpose, to summon such person against whom such complaint shall be made to appear at a time and place to be named in such summons; and upon his or her appearance, or, in default thereof, upon due proof, upon oath or affirmation of the service of such summons, it shall and may be lawful for any two justices residing within the county aforesaid to hear and determine the said complaint according to the rules of the said society . . . . and upon due proof of such fraud the said justices shall convict the said party, and award double the amount of the money so fraudulently obtained or withheld to be paid to the treasurer, to be applied by him to the purposes of the society so proved to have been imposed upon and defrauded, together with such costs as shall be awarded by the said justices, not exceeding the sum of ten shillings; and in case such person against whom such complaint shall be made shall not pay the sum of money so awarded to the person and at the time specified in the said order, such justices are hereby required, by warrant under their hands and seals, to cause the same to be levied by distress and sale of the goods of such person on whom such order shall have been made, or by other legal proceeding, together with such costs as shall be awarded by the said justices, not exceeding the sum of ten shillings, and also the costs and charges attending such distress and sale or other legal proceeding, returning the overplus (if any) to the owner; and, in default of such distress being

found, the said justices of the peace shall commit such person so proved to have offended to the common gaol or house of correction, there to be kept to hard labour for such a period, not exceeding three calendar months, as to them shall seem fit: provided nevertheless, that nothing herein contained shall prevent the said society from proceeding by indictment or complaint against the party complained of; and provided also, that no party shall be proceeded against by indictment or complaint, if a previous conviction has been obtained for the same offence under the provisions of this Act.

26. And be it further enacted, that it shall not be lawful for any such society, by any rule at any general meeting, or otherwise, to dissolve or determine such society, so long as the intents or purposes declared by such society, or any of them, remain to be carried into effect, without obtaining the votes of consent of five-sixths in value of the then existing members of such society, to be ascertained in manner hereinafter mentioned, and also the consent of all persons then receiving or then entitled to receive relief from such society, either on account of sickness, age, or infirmity, to be testified under their hands individually and respectively; and for the purpose of ascertaining the votes of such five-sixths in value, every member shall be entitled to one vote, and an additional vote for every five years that he may have been a member. Provided also, that no one member shall have more than five votes in the whole; and in all cases of dissolution the intended appropriation or division of the funds or other property of such society shall be fairly and distinctly stated in the proposed plan of dissolution, prior to such consent being given; nor shall it be lawful for such society by any rule to direct the division or distribution of such stock or fund, or any part thereof, to or amongst the several members of such society other than for carrying into effect the general intents and

APPENDIX D.

purposes of such society, declared by them . . . . according to the directions of this Act, but that all such rules for the dissolution or determination of any such society, without such consent as aforesaid, or for the distribution or division of the stock or fund of such society, contrary to the rules . . . . shall be void and of none effect; and in the event of such division or misappropriation of the funds of such society, without the consent hereby declared to be requisite, the trustee or other officer or person aiding or abetting therein shall be liable to the like penalties as are hereinbefore provided for in cases of fraud.

Rules to be made directing how disputes shall be settled.

27. Provided always, and be it further enacted, that provision shall be made by one or more of the rules of every such society . . . . specifying whether a reference of every matter in dispute between any such society, or any person acting under them, and any individual member thereof, or person claiming on account of any member, shall be made to such of his Majesty's justices of the peace as may act in and for the county in which such society may be formed, or to arbitrators to be appointed in manner hereinafter directed; and if the matter so in dispute shall be referred to arbitration, certain arbitrators shall be named and elected at the first meeting of such society, or general committee thereof, that shall be held after the enrolment of its rules, none of the said arbitrators being beneficially interested, directly or indirectly, in the funds of the said society, of whom a certain number, not less than three, shall be chosen by ballot in each such case of dispute, the number of the said arbitrators and mode of ballot being determined by the rules of each society respectively; the names of such arbitrators shall be duly entered in the book of the said society in which the rules are entered as aforesaid; and in case of the death, or refusal or neglect of any or all of the said arbitrators to act, it shall and may be lawful to and for the said society, or general committee thereof, and they are hereby required, at their next meeting, to name

Appointment of arbitrators.

and elect one or more arbitrator or arbitrators as aforesaid to act in the place of the said arbitrator or arbitrators so dying or refusing or neglecting to act as aforesaid; and whatever award shall be made by the said arbitrators, or the major part of them, according to the true purport and meaning of the rules of such society . . . shall be in the form* to this Act annexed, and shall be binding and conclusive on all parties, and shall be final, to all intents and purposes, without appeal, or being subject to the control of one or more justices of the peace, and shall not be removed or removable into any Court of law, or restrained or restrainable by the injunction of any Court of equity; and should either of the said parties in dispute refuse or neglect to comply with or conform to the decision of the said arbitrators, or the major part of them, it shall and may be lawful for any one justice of the peace residing within the county within which such society shall be held, upon good and sufficient proof being adduced before him of such award having been made, and of the refusal of the party to comply therewith, upon complaint made by or on behalf of the party aggrieved, to summon the person against whom such complaint shall be made to appear at a time and place to be named in such summons; and upon his or her appearance, or in default thereof, upon due proof, upon oath, of the service of such summons, any two justices of the peace may proceed to make such order thereupon as to them may seem just; and if the sum of money so awarded, together with a sum for costs not exceeding the sum of ten shillings, as to such justices shall seem meet, shall not be immediately paid, then such justices shall, by warrant under their hands and seals, cause such sum and costs as aforesaid to be levied by distress or by distress and sale of the moneys, goods, chattels, securities, and effects belonging to the said party or to the said society, or other legal proceeding, together with all further costs and charges attending such distress and sale or other legal proceeding,

* See *ante*, p. 191.

Justices shall enforce compliance with the decision of arbitrators.

APPENDIX D.

returning the overplus (if any) to the said party, or to the said society, or to one of the treasurers or trustees thereof; and in default of such distress being found or such other legal proceeding being ineffectual, then to be levied by distress and sale of the proper goods of the said party or of the officer of the said society so neglecting or refusing as aforesaid, by other legal proceedings, together with such further costs and charges as aforesaid, returning the overplus (if any) to the owner: provided always, that whatever sums shall be paid by any such officer, so levied on his or her property or goods in pursuance of the award of arbitrators or order of any justices, shall be repaid, with all damages accruing to him or her, by and out of the moneys belonging to such society, or out of the first moneys which shall be thereafter received by such society.

Reference of disputes to justices, if so directed by the rules of the society.

28. And be it further enacted, that if by the rules of any such society it is directed that any matter in dispute as aforesaid shall be decided by justices of the peace, it shall and may be lawful for any such justice, on complaint being made to him of any refusal or neglect to comply with the rules of such society by any member or officer thereof, to summon the person against whom such complaint shall be made to appear at a time and place to be named in such summons; and upon his or her appearance, or in default thereof, upon due proof, on oath or affirmation, of the service of such summons, it shall and may be lawful for any two justices to proceed to hear and determine the said complaint according to the rules of the said society; and in case the said justices shall adjudge any sum of money to be paid by such person against whom such complaint shall be made, and such person shall not pay such sum of money to the person and at the time specified by such justices, they shall proceed to enforce their award in the manner hereinbefore directed to be used in case of any neglect to comply with the decision of the arbitrators appointed under the authority of this Act.

Orders of justices to be final.

29. And be it further enacted, that every sentence, order, and adjudication of any justices under this Act shall be final and conclusive to all intents and purposes, and shall not be subject to appeal, and shall not be removed or removable into any Court of law, or restrained or restrainable by the injunction of any Court of equity, and that no suspension, advocation, or reduction shall be competent.

Minors may be members, and have legal authority to act.

32. And be it further enacted, that a minor may become a member of any such society, and shall be empowered to execute all instruments, give all necessary acquittances, and enjoy all the privileges and be liable to all the responsibilities appertaining to members of matured age, notwithstanding his or her incapacity or disability in law to act for himself or herself: provided always, that such minor be admitted into such society by and with the consent of his or her parents, masters, or guardians.

Societies shall make annual audits and statements of the funds to the members.

33. And be it further enacted, that the rules of every such society shall provide that the treasurers, trustees, stewards, or other principal officer thereof shall, once in every year at least, prepare or cause to be prepared a general statement of the funds and effects of or belonging to such society, specifying in whose custody or possession the said funds or effects shall be then remaining, together with an account of all and every the various sums of money received and expended by or on account of the said society since the publication of the preceding periodical statement; and every such periodical statement shall be attested by two or more members of such society appointed auditors for that purpose, and shall be countersigned by the secretary or clerk of such society; and every member shall be entitled to receive from the said society a copy of such periodical statement, on payment of such sum as the rules of such society may require, not exceeding the sum of sixpence.

APPENDIX D.

Exemption from stamp duties.

* *Sic.*

37. And be it further enacted, that no copy of rules, power, warrant or letter of attorney granted or to be granted by any persons* as trustee of any society established under this Act for the transfer of any share in the public funds standing in the name of such trustee, nor any receipts given for any dividend in any public stock or fund or interest of exchequer bills, nor any receipt, nor any entry in any book of receipt, for money deposited in the funds of any such society, nor for any money received by any member, his or her executors or administrators, assigns or attorneys, from the funds of such society, nor any bond nor other security to be given to or on account of any such society, or by the treasurer or trustee or any officer thereof, nor any draft or order, nor any form of assurance, nor any appointment of any agent, nor any certificate or other instrument for the revocation of any such appointment, nor any other instrument or document whatever required or authorized to be given, issued, signed, made or produced in pursuance of this Act, shall be subject or liable to or charged with any stamp duty or duties whatsoever (*a*).

Construction of Act.

38. And be it further enacted, that the word "society" in this Act shall be understood to include friendly society or societies, institution or institutions; the word "rules" to include rules, orders, and regulations; the word "county" to include county, riding, division, or place; and the words "treasurer or trustee" to include treasurers or trustees; and the word "person" to include persons; and the word "book" to include books; and the word "bond" to include bonds; "name" to include names; "account" to include accounts; "member" to include members and honorary members; "clerk of the peace" to include town clerk; unless it be otherwise specially provided.

(*a*) As to mortgages, see now the Stamp Act, 1891, s. 89, *ante*, p. 70.

4 & 5 WILL. 4, c. 40.

An Act to amend an Act of the Tenth Year of His late Majesty King George the Fourth, to consolidate and amend the Laws relating to Friendly Societies.

[30th July, 1834.]

[The following appear to be the provisions of the Act which apply to unincorporated building societies and to be still in force; the words in brackets are the alterations made by the Building Societies Act, 1874.] APPENDIX D.

Sect. 1 repeals sects. 6, 20, and 30, parts of sects. 34 and 35, and sect. 36 of 10 Geo. 4, c. 56.

Repeal of 10 Geo. 4, c. 56, s. 4, and part of s. 7.

3. And be it further enacted, that so much of the said recited Act as relates to the rules of friendly societies being transmitted to the barrister or advocate, and deposited with the clerk of the peace and certified by him, as well as so much as relates to alterations of rules being certified by the clerk of the peace, and that no rule or alteration or amendment should be binding until confirmed by the justices, and filed under the recited Act, shall be and the same are hereby repealed.

Two transcripts of rules to be submitted to a barrister, &c., by whom they are to be certified.

4. And be it further enacted, that two transcripts, fairly written on paper or parchment, of all rules made in pursuance of the said recited Act or this Act, signed by three members, and countersigned by the clerk or secretary, (accompanied, in the case of an alteration or amendment of rules, with an affidavit of the clerk or secretary or one of the officers of the said society that the provisions of the said recited Act, or of the Act under which the rules of the society may have been enrolled, have been duly complied with,) with all convenient speed after the same shall be made, altered, or amended, and so from time to time after

APPENDIX D.

every making, altering, or amending thereof, shall be submitted . . . . to [the registrar] for the purpose of ascertaining whether the said rules of such society, or alteration or amendment thereof, are calculated to carry into effect the intention of the parties framing such rules, alterations, or amendments, and are in conformity to law and to the provisions of the said recited Act or this Act; and that the said [registrar] shall advise with the said clerk or secretary, if required, and shall give a certificate on each of the said transcripts, that the same are in conformity to law and to the provisions of the said recited Act and this Act, or point out in what part or parts the said rules are repugnant thereto; and that the [registrar] for advising as aforesaid, and perusing the rules, or alterations or amendments of the rules of each respective society, and giving such certificates as aforesaid, shall demand no further fee than that specified in the said recited Act; and one of such transcripts, when certified by the said [registrar], shall be returned to the society, and the other of such transcripts shall be [kept by the registrar]; and that all rules, alterations and amendments thereof, from the time when the same shall be certified by the said [registrar] shall be binding on the several members and officers of the said society, and all other persons having interest therein.

Barrister, &c., to certify both transcripts.

Fee payable to barrister.

One transcript to be returned to society, the other to be kept by the registrar.

Rules, &c., to be binding when certified by barrister.

5. Provided always, and be it enacted, that the said [registrar] shall be entitled to no further fee for or in respect of any alteration or amendment of any rules upon which one fee has been already paid to the said [registrar] within the period of three years: provided also, that if any rules, alterations or amendments, are sent to such [registrar], accompanied with an affidavit of being a copy of any rules, or alterations or amendments of the rules, of any other society, which shall have been already enrolled under the provisions of the said recited Act or this Act, the said [registrar] shall certify and return the same as aforesaid, without being entitled to any fee for such certificate.

Registrar not to be entitled to fee in respect of alterations within three years, nor for certificate to rules being copies of those already enrolled.

If rules of society direct reference in case of dispute to arbitration, and society refuse to grant arbitrators, &c., justices may determine the dispute.

7. And whereas in and by the said recited Act provision is directed to be made by the rules of every society whether reference of any matter in dispute shall be made to justices or to arbitrators; and whereas it is expedient that further provision should be made in case the reference is to arbitrators; be it therefore enacted, that when the rules of any society provide for a reference to arbitrators of any matter in dispute, and it shall appear to any justice of the peace, on the complaint on oath of a member of any such society, or of any person claiming on account of such member, that application has been made to such society, or the steward or other officer thereof, for the purpose of having any dispute so settled by arbitration, and that such application has not within forty days been complied with, or that the arbitrators have neglected or refused to make any award, it shall and may be lawful for such justice to summon the trustee, treasurer, steward, or other officer of the society, or any one of them against whom the complaint is made, and for any two justices to hear and determine the matter in dispute, in the same manner as if the rules of the said society had directed that any matter in dispute as aforesaid should be decided by justices of the peace, anything in the said recited Act contained to the contrary notwithstanding.

Provision in case member of society is expelled.

8. And be it further enacted, that in case any member of a friendly society established under the said recited Act or this Act shall have been expelled from such society, and the arbitrators or justices, as the case may be, shall award or order that he or she shall be reinstated, it shall and may be lawful for such arbitrators or justices to award or order, in default of such reinstatement, to the member so expelled, such a sum of money as to such arbitrators or justices may seem just and reasonable; which said sum of money, if not paid, shall be recoverable from the said society, or the treasurer, trustee, or other officer, in the same way as any money awarded by arbitrators is recoverable under the said recited Act.

APPENDIX D.

Executors, &c., of officers of friendly society to pay money due to society before any other debts.

12. And be it further enacted, that if any person already appointed or who may hereafter be appointed to any office in a society established under the said recited Act or this Act, and being entrusted with the keeping of the accounts, or having in his hands or possession, by virtue of his said office or employment, any moneys or effects belonging to such society, or any deeds or securities relating to the same, shall die, or become a bankrupt or insolvent, or have any execution or attachment or other process issued, or action or diligence raised, against his lands, goods, chattels, or effects, or property or estate, heritable or moveable, or make any assignment, disposition, assignation, or other conveyance thereof for the benefit of his creditors, his heirs, executors, administrators, or assignees, or other persons having legal right, or the sheriff or other officer executing such process, or the party using such action or diligence, shall, within forty days after demand made in writing by the order of any such society or committee thereof, or the major part of them assembled at any meeting thereof, deliver and pay over all moneys and other things belonging to such society to such person as such society or committee shall appoint, and shall pay, out of the estates, assets, or effects, heritable or moveable, of such person, all sums of money remaining due which such person received by virtue of his said office or employment, before any other of his debts are paid or satisfied, or before the money directed to be levied by such process as aforesaid, or which may be recovered or recoverable under such diligence, is paid over to the party issuing such process or using such diligence; and all such assets, lands, goods, chattels, property, estates, and effects shall be bound to the payment and discharge thereof accordingly.

APPENDIX E.

PRECEDENTS OF RULES AND ASSURANCES.

RULES

OF THE

——— PERMANENT BUILDING SOCIETY*

(As altered on Incorporation, ———, 18—).

INDEX.

ADVANCES— RULE
Not on second mortgage 14
Security for 1, 12

AGENTS—
Allowances to 7
May be appointed..... 7
Notices through 3
Society not responsible for .. 7

ARBITRATION—
Expenses of 44
To whom dispute to be referred 43

ARREARS—
Fines on.....4, 12, 19

AUDITORS—
Accounts to be submitted to.. 30
Duties of 32, 33
Election of 27, 32, 37
Removal of..... 36

BANKERS— RULE
Payment by cheque 28

BUILDING SOCIETIES ACT, 1874.. 1, 11, 16, 26, 46

BYE-LAWS—
Directors may make..... 13
Premium to be regulated by.. 18

COPYHOLD—
Advances on 1

DEEDS—
Where to be kept 21

DEPOSITORS—
Death of 22
If funds insufficient to pay.. 20
Lunatic 21
May withdraw 20
Notices to 2
Payments, where to be made. 6
Precedence of..... 20
Receipts by 2
Term of notice 20

* The following rules are those of one of the largest and most successful societies in England. The society was founded a good many years ago, and was subsequently incorporated under the Act of 1874, on which occasion various alterations were made in the rules. The most noticeable feature in these rules is that very wide powers are given to the directors —an excellent plan, if, as in the case of this society, the services of first-rate men can be secured. The author is indebted to the kindness of a friend for permission to print these rules.

APPENDIX E.

DEPOSITS— RULE
Conditions of receipt 24
May be received 24

DIRECTORS—
Election of 27, 37
May make bye-laws 13
Number comprising the board 25
Powers of 26
Prepare statement of accounts 33
Qualifications of 25
Removal of 36
Remuneration of 25
Retirement of 27

DISPUTES—
Who to settle 43

DOCUMENTS—
May be issued by board 26

ENTRANCE FEES—
Amount 4

EXPENSES—
Incurred by society 17

FINES—
Amount 4, 12
May be deducted from payment 4, 12
When payable 4, 12

FREEHOLD—
Advances on 1

FUNDS—
Employment of 11
Raising of 1
When insufficient 20

HOLIDAYS 4

INDEMNITY TO OFFICERS 35

INTEREST—
Allowable on shares 5
Chargeable on disbursements 17
Payable on advances 12
Payable on redemption 18

LEASEHOLD PROPERTY—
Advances on 1

LETTINGS—
By lease or otherwise 18

LOANS—
Receipt of 1, 24

MEMBERS—
Death of 22
Depositors take precedence of 20
If funds insufficient to pay .. 20
In arrear 12
Lunatic 21
May inspect their accounts .. 34
Name, address, and occupation 2
Profits to 23

MEETINGS— RULE
Expenses of 39
General 39
May be adjourned 41
Notice as to 42
Resolutions at 39
Where to be held 39

MORTGAGES—
As to releases and further charges 16
By other than members 18
Copy may be supplied 15
Further charges 18
Members to give 12
Pursuant to Building Societies Act, 1874 1
Where deeds to be kept 12

MORTGAGORS—
Management of property with consent of 18

NAME OF SOCIETY 1

NOTICES TO MEMBERS AND DEPOSITORS—
Of resolutions by members .. 27, 39
Through agents 3
To be advertised 42
To be exhibited 27, 42
To first name on books 2

OBJECT OF SOCIETY 1

OFFICE OF SOCIETY—
Payments to be made at 6
Where 1

OFFICERS—
Responsibility of 10, 35
Vacancies 37

PASS-BOOKS—
Duplicate 10
Loss of 9
To be left at office 8, 20
To be supplied 8

PAYMENTS—
Of society by cheque 28

PREMIUM—
Credited on redemption 18
Payable by members 12

PROFIT ON SHARES—
May allow 5
Payment to 23

PROFITS—
Appropriation of 23

PROPERTY—
Management of 18

RECEIPTS BY MEMBERS AND DEPOSITORS 2

	RULE
RECONVEYANCE OF SECURITY	16
REDEMPTION OF MORTGAGES—	
By non-members	18
Deeds may be given up	16
On payment of principal, premium, and interest	18
REGISTER OF MEMBERS—	
Entry of name, &c.	2
RELEASES OF MORTGAGORS	18
RELEASES OF PROPERTIES	16, 18
REMITTANCES—	
When credited	6
REPAYMENTS—	
When to be made	12
RESERVE FUND—	
Profit to	23
RULES—	
Bye-laws to be according to	13
Copy to be supplied	8
Interpretation of	45
May be altered	38
SEAL—	
Application of	29
Custody of	29
Device	29
SECRETARY—	
Appointed by board	28, 30
Duties of	9, 28, 30, 33, 39, 44
SECURITIES—	
Sale of, by members	18
Where to be kept	12
SHARES—	
Cancelling of	4
Issue of	4
Nominal value of	4
Notices to members	3
Payments, where to be made	6
Preferential, prohibited	4
Registry of	2
Withdrawal of	2, 23
SOCIETY—	
May be dissolved	46
When founded: when incorporated	1
SOLICITOR—	
Appointed by board	31
Deeds may be with	12, 15
Duties of	14, 18, 31
SUBSCRIPTIONS—	
Amount	4
Payable in advance	4
Raising fund by way of	1
When due	4
Withdrawal of	20
SURVEYS, PROPERTY—	
Must be made prior to advance	14
TITLE TO PROPERTY—	
As to leasehold	14
Solicitor to investigate	14
TRANSFER—	
Of mortgaged property	18
Of shares	19
TRUSTEES—	
Board may elect	29, 37
Removal of	36
VALUE OF SHARES	4
VOTING BY MEMBERS—	
At meetings	40
On alteration of rules	32
Where account in joint names	8
WITHDRAWAL OF SUBSCRIPTIONS	20

1. THIS society, which was founded in 18—, shall be called the ——— Permanent Building Society. The chief office or place of meeting for the business of the society is ———. Its object shall be to raise and maintain, by the subscriptions of the members, and by loan as hereinafter provided, a stock or fund for investment upon the security of freehold, copyhold or leasehold property, by way of mortgage, pursuant to the Building Societies Act, 1874. Name. Office. Object.

2. Every person subscribing for a share shall be a member. Every member on entering the society shall state his Members. Shares.

APPENDIX E.

Receipts. Residence. Notices.

name, place of abode and occupation, which shall be entered in a register to be kept at the office, and upon changing his residence shall give notice thereof within one month afterwards, or be fined one shilling.

In respect of any share or deposit registered in the name of one person only, a receipt signed by such person shall be alone a good discharge for any payment by the society on account of such share or deposit.

If any share shall be held by two or more persons jointly, the person whose name shall stand first upon the register of shareholders shall alone be entitled to vote, in respect of such share. If any share or deposit shall be held by two or more persons jointly, the person whose name shall stand first upon the books of the society shall alone be entitled to receive notices and communications in respect of such share or deposit; but the receipt of any one of such joint holders shall be a good discharge to the society for any profit or interest paid in respect of such share or deposit.

For the withdrawal of any principal money the signatures of all the joint owners shall be required.

The board shall have power to decline to register any share or deposit in more than three names, and may decline to issue any share to any person whose membership they may consider detrimental to the society.

Notices to members or depositors.

3. Every notice or communication to a member or depositor may be served by being left at his place of abode, as described on the register, or addressed to him there, and sent prepaid by post. Notices or communications for members or depositors paying through an agent may be served by being sent to such agent in either of such ways.

Entrance fees. Subscriptions. Holidays. Fines.

4. Every member, on entering the society or taking an additional share, shall pay an entrance fee of one shilling per share. The nominal value of every share shall be 30*l.*; and shares may be issued from time to time in the discretion

of the board, and upon such terms as they may think fit, but no preferential shares shall be issued.

The subscriptions on every share on which no advance shall have been made (except completed or paid-up shares) shall be due on the first Monday in each month, and be four shillings per month, and shall be paid in advance, and payments becoming due on Christmas Day, or any Bank Holiday, may be made on the next day. Members making default in paying their subscriptions on unadvanced shares shall pay, for any share in arrear, a fine of one penny per month, or part of a month, and such fines shall be enforced if the payments be not received at the office by the Monday after the day on which they become due, and may be deducted at the time of making the next or any subsequent payment.

If in any case the amount due for fines on unadvanced shares shall equal the amount which would be payable on withdrawal, the board shall have power to cancel such shares.

Interest or profit.

5. The board may allow interest on the amount paid upon completed and subscribing shares respectively, at such rates as they shall think fit.

Remittances.

6. All payments shall be made at the office, and no amount, however transmitted, shall be placed to the credit of the member or depositor sending it, until the money is actually received at the office.

Agents.

7. Any number of members may (subject to the approbation of the board) appoint any member of the society as their agent for the transmission of their money, and the board will make to such agent such allowance as they may think fit, but the society shall not be responsible for any act or default on the part of any such agent.

Pass-book.

8. Every member shall be furnished with a pass-book, and a copy of the rules of the society, for which he shall pay one shilling, in which his payments shall be entered, and his account with the society from time to time made

APPENDIX E.

up. In the month of December, in every year, such pass-books must be left at or sent to the office to be made up and audited.

Loss of pass-book.

9. Any member losing his pass-book shall give the secretary immediate notice of the loss, and on paying two shillings and sixpence shall be furnished with a duplicate.

10. If any person other than the member to whom it shall belong shall produce any pass-book (either duplicate or original), and represent himself to be the member therein named, and shall thereupon withdraw or receive any money in respect of the account therein contained, neither the society nor any of its officers shall be responsible for the same, unless notice of the loss of such pass-book shall have been previously given, and the money so obtained shall be deemed to have been paid to the member whose book shall have been so produced.

Employment of funds.

11. The funds of the society are to be employed by the board in making advances to members in such order and to such amount as shall be determined by the board, and all money not so employed shall be from time to time invested upon mortgage of freehold, leasehold, or copyhold property, or other security, as provided by the Building Societies Act, 1874, in such manner as the board shall direct.

The board may also from time to time place any money temporarily on deposit in any joint stock bank.

Security.
Repayments.
Premium.
Interest.
Fines.
Deeds.

12. Every member receiving an advance shall give security by mortgage to the satisfaction of the board. The member receiving the advance shall repay the amount with such premium and interest by such monthly or other instalments as shall be agreed upon. Every member entitled to or having received an advance, and being in arrear with any of his payments in respect of such advance, shall be fined after the rate of threepence for every share or part of a share for each monthly or other payment in

arrear; such fines shall be enforced if the payments be not received at the office by the Monday after the day on which they become due, and may be deducted at the time of making the next or any subsequent payment. The mortgage deeds and all other securities belonging to the society shall be kept in the fire-proof strong rooms at the office of the society, except when in the custody of and required by the solicitor for the purposes of the society.

Bye-laws.

13. The directors shall have power from time to time to make bye-laws for the regulation of the society according to the rules.

Titles to property.

14. It shall be the duty of the solicitor carefully to investigate and present to the board a written report and opinion upon the title to every property offered as security for an advance. In the case of leaseholds such report shall state whether the solicitor has had the opportunity of investigating the title of the lessor or sub-lessor in addition to that of the borrower; together with any information in his possession which may assist the board in judging whether it will be safe to dispense with the investigation of such superior title. No advance shall be made upon any property which shall be mortgaged to any other persons than the society, nor until it has been surveyed on behalf of the society.

Mortgage deeds.

15. Every member may have, at his own expense, an official copy of his mortgage security delivered to him, certified by the signature of the solicitor.

Releases.

16. Whenever the money secured by any mortgage or further charge shall have been paid, all documents of title in the possession of the society relating to the mortgage or further charge which shall have been so redeemed, shall be given up; and the society shall, at the request and costs of the member, execute a release of the mortgage or further charge by a receipt in the form set forth in the schedule to the Building Societies Act, 1874, or may reconvey or assure the premises in question as the member may direct. Pro-

APPENDIX E.

vided, that if there shall be any principal money owing by such member, in respect of any other mortgage or further charge, he shall not be entitled to the delivery of such documents without the consent of the board.

Expenses.

17. All expenses incurred by the society, or any officer or agent, in respect of any property mortgaged, or offered in security by any member, may, if the board think fit, be paid out of the society's funds in the first instance, and in that case shall be recoverable from the member, with interest at five per cent., as rent in arrear, or charged in the same way as if it were principal money, and in the meantime shall be a charge upon all property mortgaged by the member to the society, and all funds of the member in their hands.

Sales, &c., of property.
Redemptions.
Mortgages by non-members.
Releases.
Letting, &c.

18. If any member, having received an advance and secured the payment thereof upon any property, shall sell such property, it shall be lawful for the purchaser, subject to the approval of the board, upon becoming a member in his stead, to take the said property, chargeable with the mortgage debt, and all payments in respect thereof due to the society, and with the expense of the transfer, if not paid at the time, and the purchaser, or new member, shall thenceforth become answerable to the society for the said debt and payment, and the board may, if they see no objection, release such member so selling from all future liability in respect thereof, provided that such transfer be prepared by the solicitor to the society, at the expense of the member.

Mortgages by members of the society, executed prior to———, 18—, may be redeemed at any time on payment of the balance of the principal and premium secured by the mortgage, together with all other charges due by the member, and interest to the 30th June, or the 31st of December, which shall first accrue next after the payment is made, after being credited with a proportion of the premium to be regulated by the bye-laws. Mortgages by

members of the society, executed on or after ———, 18—, may be redeemed at any time on payment of the principal secured by the mortgage, together with all other charges due by the member, and interest at five per cent. upon the balance due on the 31st of December preceding to the date of the redemption, together with an amount equal to three months' interest upon the principal due at the date of redemption.

Mortgages by persons other than members shall be subject to the ordinary equitable rules of redemption, subject to any special arrangement between the board and the mortgagor.

The board may, from time to time, at the request of any mortgagor, accept any other security by mortgage in manner hereinbefore specified, or by way of further charge on any other property already mortgaged to the society, in the place of any existing security, and such last-mentioned security may be thereupon duly released. The board may also release any portion of any mortgaged property if they shall be satisfied with the security of the property left on mortgage, and make any arrangement with regard to the sale or letting by lease or agreement, and the general management or disposal of any mortgaged property which they may deem desirable or beneficial to the society, but only with the consent of the mortgagor so long as he shall not be in arrear with his repayments in respect of such property.

Transfers

19. Any member may (subject to the approval of the board) transfer his share to any other person, on payment of all arrears and fines, together with a transfer fee of one shilling per share, or part of a share; but no transfer shall be valid unless made and recorded in the manner to be from time to time directed by the board.

Withdrawal of money.

20. Any member may withdraw the subscriptions standing to his credit, and such proportion of the profit as shall be from time to time determined by the board,

APPENDIX E.

at any time after the expiration of one month from the time when he shall have given notice in writing of his intention to do so, and left his pass-book at the office; any depositor may withdraw the deposits standing to his credit, at any time after the expiration of the term of notice agreed upon, but if the money in hand shall be at any time insufficient to pay all the depositors and members having given notice to withdraw, the depositors shall, in all cases, have precedence; and subject thereto, depositors and members shall be paid in rotation, according to the priority of their notices.

Lunacy of members or depositors.

21. If it shall appear to the board that any member or depositor has become lunatic, and that there is no committee of his effects (although the contrary may, in either case, be the fact), any person appearing to have care of such member or depositor may, with the consent of the board, withdraw the amount standing to his credit, or any portion thereof, in manner aforesaid; and such withdrawal, with such consent as aforesaid, shall be considered as the valid act of such member or depositor, and be binding on him and his representatives.

Death of members or depositors.

22. In case any member or depositor to whose credit any sum of money not exceeding fifty pounds shall be standing in the books of the society shall die, and the board shall be satisfied that no will was made and left by such deceased member or depositor, and that no letters of administration have been or will be taken out (although the contrary may, in either case, be the fact), it shall be lawful for the board to pay such money to the person whom they shall think entitled to the effects of the deceased member or depositor, and every such payment shall, so far as respects any claim against the society, or any of its officers or members, be binding and valid upon and against the next of kin of such deceased member or depositor and his lawful representatives, if any such there should then or thereafter be.

23. At the end of every year such portion of the profits as the board shall think equitable shall be carried to a reserve fund, and the remainder shall be placed to the credit of the investing shareholders who have subscribed for one year and upwards by way of bonus or interest, in such proportions as the board may direct, but no portion of such profit shall be paid to any member until his share is completed or withdrawn, when such portion may be payable, as the board may from time to time direct. Profits.

24. The board may, whenever they think it conducive to the interest of the society, receive deposits of the members or any other persons, or borrow money to be applied in aid of the funds of the society, upon such terms as they may think fit, and such money may be repaid out of the funds of the society, with interest and all expenses incidental to the transaction, provided that the total amount so received on deposit or loan shall not at any time exceed two-thirds of the amount for the time being secured to the society by mortgage from its members. Specific notice shall be given by the board to every depositor by endorsement on the deposit certificate, that all deposits are received subject to the provisions of Rules 2, 3, 6, 20, 21, 22, and 24, regarding deposits, a copy of which rules shall be given to the depositor, or endorsed on the deposit certificate. Deposits and loans.

25. The business of the society shall be conducted by a board of directors, of such a number of members, not exceeding twenty-four, as shall be determined by the annual meeting. Each director elected after ———, 18—, must hold investing shares on which not less than 150*l.* shall be permanently at his credit. The remuneration of the board shall be such sum as from time to time shall be voted by the members at a general meeting, and in the event of no alteration being made the amount last voted shall be payable. Directors.

26. The board of directors shall have power to appoint an executive committee and other committees, with such Directors. Committees. Documents.

APPENDIX E.

powers and such remuneration as they may deem expedient; and to conduct and manage the affairs of the society in all things according to their discretion, subject only to the rules for the time being; and from time to time to authorize all instruments or documents to be given, issued, signed, made, or produced, which they shall deem necessary or proper in conducting the affairs of the society in accordance with the Building Societies Act, 1874.

Directors. General meeting. Auditors. Elections.

27. One-third in number (or the number nearest to one-third) of the directors shall retire annually, the order of retirement being determined by rotation, and the vacancies shall be supplied by the members at the annual general meeting, and the retiring directors shall be eligible without notice of nomination for re-election. Twenty-eight days' previous notice in writing shall be given to the board by any member intending to propose himself, or any other member not being a retiring director or auditor for election as a director or auditor of the society; such notice shall contain the name, address, and occupation of the member to be proposed, and shall be exhibited in the offices of the society for at least seven days previous to such meeting. If, on the occasion of any election of directors, there shall be more candidates than vacancies, the election shall be conducted by the existing board for the time being in such a manner, and at such time and place, as they may think fit.

Payments.

28. No payment shall be made out of the funds of the society except by order of the board; and all payments shall be made by cheques upon the bankers, signed by two members of the board, and countersigned by the secretary.

Trustees.

29. The board shall have power from time to time to elect and appoint one or more fit and proper person or persons to be a trustee or trustees of the society, as occasion may require.

Seal.

The seal of the society shall be kept at the chief office

in the custody of the board, and shall be applied to such documents as shall from time to time be directed by them. The device thereof is prefixed to these rules.

Secretary.

30. The board of directors shall appoint the secretary of the society. He shall not, without the consent of the board of directors, accept any other official engagement, and his salary shall be determined by the board of directors. The secretary shall give all notices, and convene and attend all meetings, and record all minutes of the proceedings thereat; he shall prepare the annual general statement of the affairs of the society hereafter named, and shall submit it to the auditors at least fourteen days before every annual meeting. He shall also conduct the general business of the society, under the direction of the board, and he shall make all returns required to be sent to the registrar.

Solicitor.

31. The board of directors shall appoint a solicitor to the society. The solicitor shall conduct all legal business of the society, and attend, when required, all meetings of the board, for which he shall be allowed the usual professional charges.

Auditors.

32. At every annual meeting the members shall elect and appoint two members, who, with one to be appointed by the board, shall audit the accounts of the ensuing year, and at the same time inspect the mortgages and other securities belonging to the society.

Balance-sheets.

33. The board shall, at the end of each year, prepare, or cause to be prepared, a general statement of the funds and effects of or belonging to the society, specifying in whose custody or possession the said funds or effects shall be then remaining, together with an account of all sums of money received and expended since the publication of the previous periodical statement, and the same shall be certified by two of the said auditors, and countersigned by the secretary, and a copy of such statement shall be sent to the members at least three days before the annual meeting.

APPENDIX E.

Members' accounts.

34. Any member or his agent shall be allowed to inspect his account in the society's books at all reasonable times.

Indemnity.

35. No director, trustee, or other officer of this society, shall be responsible for, or liable to make good, any deficiency which may arise in the funds of the society otherwise than by reason of his wilful default; but every such officer shall be answerable for the money and property actually received by him on account of the society, until he shall have disposed of the same in accordance with these rules.

Vacancies.

36. If any director, trustee, or auditor, shall become bankrupt, compound or compromise with, or make an assignment for the benefit of his creditors, or become insane, or shall signify his wish to retire from his office, or shall refuse, neglect, or become incapable to act therein, or if any director shall cease to be qualified as provided by Rule 25, the board shall remove him therefrom.

Vacancies.

37. If any vacancy shall occur in the office of trustee, director, auditor, or other office, other than such as is provided for by these rules, such vacancy may in each case be supplied by the board. Any director so appointed shall hold office only so long as the vacating director would have done.

Alteration of rules

38. Any rule may be altered or rescinded, and any additional rule may be made by the vote of three-fourths of the members present, and entitled to vote at a special meeting called for the purpose, of which meeting notice shall have been given to the members in the manner provided by Rule 42—provided that any alterations voted, which in the opinion of the board would be injurious to the society, may be suspended for two months by the board for the purpose of being submitted to a poll of the whole of the members by means of voting papers, and shall be decided upon by a majority of votes so given.

Annual and special meetings.

39. A general meeting of the members shall be held annually in the month of February or March to receive

the report of the directors for the past year, and for general purposes; and a special meeting shall be held whenever directed by the board; and they shall give such directions at any time upon the written request of any twenty members of the society, who shall give to the secretary written notice of the proposals to be made to such special meeting; and deposit with the secretary such sum of money as the board shall deem sufficient to pay all the expenses of convening and holding such meeting; and every special meeting convened at the request of the members, shall decide whether such expenses shall be paid by the society, or out of the money so deposited.

All meetings of the members shall be held at such time and place as the board shall appoint. No resolution shall be brought forward at any general or special meeting, except such as arise upon the report of the directors, unless twenty-eight days' previous notice, in writing, of such resolutions shall have been given to the board.

Voting.

40. In every case not otherwise provided for, all questions submitted to meetings shall be decided by votes of the majority of the members present and entitled to vote; and such votes shall be first taken by show of hands, or by voting papers, upon which the decision of the chairman shall be final, unless a scrutiny shall be demanded, in which case it shall be taken, at such time and place as the board may determine; and then such members of six months' standing, whose subscriptions are not in arrear, including the chairman, shall have one vote; and if there shall be an equality of votes, the chairman shall give the casting vote.

Adjournments.

41. Any meeting of members, or of any committee, may be adjourned or removed from one place to another, any number of times, by resolution of such meeting; and every meeting by adjournment or removal, as aforesaid, shall be deemed a continuation of the original meeting.

Notices of meetings.

42. Notices of all meetings of the members shall be

APPENDIX E.

conspicuously posted in the offices of the society, at least three weeks before the day of meeting, and shall, unless called by circular, be advertised in two daily and two weekly London newspapers, and such other papers as the board may think proper, at least two weeks before the day of meeting; and such notices shall be deemed sufficient to convene any meeting of members.

Arbitration.

43. Every dispute between the board and any member or person claiming by or through any member or under the rules on which the decision of the board shall not be deemed satisfactory, shall be settled by reference to the registrar, under the Building Societies Act, 1874.

Arbitration.

44. Each member, requiring a reference to arbitration, shall deposit with the secretary 1*l.* on account of costs. The costs and expenses of the arbitration, including such deposit, shall be in the discretion of the registrar.

Interpretation.

45. In the construction of these rules a month shall be held to be a calendar month. The word "year" shall mean the society's year, and the society's first year shall be taken to expire with the ——— day of ———, 18—; and by the word "board" shall be understood "board of directors;" and whenever any word importing the singular number or the masculine gender only is used, it shall be held to include and apply to the plural number or feminine gender, as the case may be, and *vice versâ*, unless there shall be something in the subject or context repugnant to such construction.

Dissolution.

46. The society may be dissolved in the manner prescribed by the Building Societies Act, 1874, s. 32.

MORTGAGE OF LEASEHOLDS TO A PERMANENT BUILDING SOCIETY.

THIS INDENTURE made the ——— day of ——— 18— Between A. B. of &c. (hereinafter called the mortgagor) of the one part and the ——— Building Society incorporated under the Building Societies Act 1874 (hereinafter called the society) of the other part WHEREAS by an indenture of lease dated the ——— day of ——— and made between C. D. of the one part and E. F. of the other part All that &c. [*parcels from the lease*] with the appurtenances were demised to the said E. F. his executors administrators and assigns for the term of ——— years from the ——— day of ——— at the yearly rent of £——— and subject to covenants by the lessee and conditions therein contained AND WHEREAS the said premises are now vested in the mortgagor for the residue of the said term of ——— years AND WHEREAS the mortgagor is a member of the society and has agreed to borrow the sum of £——— in respect of his ——— advanced shares therein for the term of ——— years and to assure the premises to the society to secure the repayment of such sum with interest and premium as hereinafter mentioned NOW THIS INDENTURE WITNESSETH that in consideration of the premises and of the sum of £——— paid out of the funds of the society on the execution hereof to the mortgagor (of which sum he doth hereby acknowledge the receipt) The mortgagor as beneficial owner hereby demises unto the society all the said hereditaments and premises by the said indenture of the ——— day of ——— expressed to be demised TO HOLD the said premises unto the society for the residue of the said term of ——— years (except the last three days thereof) by way of mortgage for securing the discharge by the mortgagor in accordance

APPENDIX E.

with the rules and bye-laws of the society of the sum of £——— (being the aggregate amount of the said cash advance and an agreed premium therefor) and of all subscriptions fines interest and other sums if any which before such discharge may be owing by the mortgagor to the society upon the above-mentioned shares or upon any other share or shares therein or in any other way AND IT IS AGREED that if three of the monthly subscriptions herein provided for shall be in arrear and unpaid or if default be made by the mortgagor in observance or performance of some agreement covenant rule or bye-law herein contained or incorporated by reference or otherwise or if the mortgagor shall be bankrupt or in insolvent circumstances or make any general arrangement with his creditors whether by deed or otherwise then and in any and each of such events the society may at any time thereafter and from time to time in their absolute discretion without any further consent of the mortgagor do all any or either of the following acts that is to say—Require immediate payment from the mortgagor of the full amount that at the date of such request would be necessary for the redemption of this mortgage in accordance with the rules and bye-laws of the society or distrain for the amount of any monthly subscriptions and fines which shall be in arrear and unpaid and of any payments made by the society under the powers hereby conferred upon them as for rent in arrear upon a common demise or enter into possession of the premises or receipt of the rents and profits thereof or appoint a collector of such rents and profits at a reasonable remuneration or demise the premises or any part thereof for any terms and upon any conditions or complete any unfinished buildings thereon or repair the premises when and as the society shall deem any repair needful or expedient and for such purposes enter into such contracts as they may think proper or expedient or insure any buildings on the said premises from fire in

such sums as the society shall deem expedient or pay [the ground rent or] any rates or taxes and all costs charges expenses and outgoings incurred or payable in respect of the premises And may either before or after doing any such act as aforesaid and subject or not to any such demise sell the premises or any part thereof by public auction or private contract subject or not to any special or other conditions as to title or otherwise and buy in or rescind contracts and resell without responsibility for loss and do all things necessary for effectuating demises and sales And shall out of the said rents and profits and moneys arising from sales or any or either of them so far as the same will extend firstly pay [the ground rent and] the rates and taxes in respect of the premises and all such costs charges expenses and outgoings as aforesaid together with interest thereon respectively at the rate of five pounds per centum per annum from the respective times of any such payments and next retain all subscriptions fines interest premium and other moneys due or owing by the mortgagor to the society in respect of the above-mentioned shares or any other share or shares therein in accordance with the rules and bye-laws of the society and after discharge of all moneys intended to be hereby secured pay the surplus (if any) to the mortgagor And it is agreed that the receipts of the society or of any authorized officer or agent of the society shall discharge lessees tenants occupiers purchasers and other persons paying rents profits purchase and other moneys to the society from the same and from seeing to the application thereof And that no lessee tenant occupier purchaser or other person shall be bound to inquire whether any monthly subscriptions are in arrear or whether default has been made as aforesaid or whether any money remains on the security of these presents or whether the conditions of sale were proper or otherwise as to the propriety or regularity of any exercise of any power hereby conferred or be affected by notice

APPENDIX E.

actual or constructive to the contrary AND IT IS FURTHER AGREED that in case the mortgagor shall commit any breach of any covenant or agreement included herein the society shall be entitled to exercise any of the rights or powers thereupon arising at any time thereafter notwithstanding any time given by the society to the mortgagor or receipt of any moneys or other act done by the society and which but for this clause might have been construed to be a waiver of such breach AND the mortgagor hereby covenants with the society that he the mortgagor will during the continuance of this security duly and punctually pay to the proper officer and at the office for the time being of the society the monthly subscription of ——— on the [first Monday] in every calendar month commencing with the month of ——— next until the whole of the said sum of £——— and interest at the rate of five pounds per centum per annum from the ——— day of ——— shall have been duly paid to the society or discharged as aforesaid such interest to be calculated for the present year on the said sum of £——— and for each succeeding year on the amount remaining due to the society on the thirty-first day of December in the year last preceding and to be then debited to the account of the mortgagor in the books of the society AND THAT the mortgagor will upon demand pay to the society all and every sums or sum of money which they shall expend under or in execution of the powers hereby conferred on them with interest for the same after the rate of five pounds per centum per annum from the respective times of the payment thereof AND WILL keep the buildings now or hereafter standing on the premises in good repair and also insured against loss or damage by fire to the amount of three-fourths of the value at least in such names office and manner as shall from time to time be required by the society and deposit every policy for such insurance with the society and produce the receipts for the payment of such insurance [and of the ground-rent

payable in respect of the premises] within seven days after the first day on which the same respectively shall become payable or sooner on request to the proper officer and at the office for the time being of the society And that if the premises shall be sold as aforesaid and if the rents and profits (if any) received by the society and the moneys produced by the sale shall be deficient to answer the trusts hereinbefore declared thereof the mortgagor will immediately pay to the society the sum necessary to make up such deficiency And that after any sale or sales shall have been made by the society the mortgagor will stand possessed of the premises sold for the last three days of the term granted by the said indenture of lease upon trust for the purchaser or purchasers of the said premises and will assign the same as such purchaser or purchasers shall direct And it is hereby agreed that the position and powers of the mortgagor with regard to demising or letting the premises hereby assured or any part thereof shall be the same in all respects as they would have been prior to the passing of the Conveyancing and Law of Property Act 1881 And further that the rules and bye-laws for the time being of the society shall apply to this mortgage and be taken by reference as incorporated herein except so far as the same have been waived by these presents And lastly that where the context allows the expressions the "mortgagor" and "society" used herein include besides the mortgagor and society herein named all persons deriving title under them respectively In witness &c.

APPENDIX E.

MORTGAGE OF FREEHOLDS AND COPYHOLDS TO A TERMINATING BUILDING SOCIETY.

THIS INDENTURE made the ——— day of ——— 18— Between A. B. of &c. a member of the ——— Building Society incorporated under the Building Societies Act 1874 (hereinafter called the mortgagor) of the one part and the said ——— Building Society (hereinafter called the society) of the other part WITNESSETH that in consideration of the sum of £——— on the execution of these presents paid by the society to the mortgagor being the amount to which he is entitled in respect of ——— shares held by him in the society (the receipt whereof he hereby acknowledges) the mortgagor doth hereby covenant with the society that he will duly and punctually pay to the society all subscriptions and other moneys which according to the rules for the time being of the society shall from time to time become payable in respect of the said ——— shares and also will duly observe all the rules of the society AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid the mortgagor as beneficial owner doth hereby grant unto the society and their assigns All that &c. [*parcels*] TO HOLD the said premises unto and to the use of the society and their assigns in fee simple PROVIDED ALWAYS that if the mortgagor shall pay to the society all the subscriptions and other moneys which according to the rules for the time being of the society shall from time to time become payable in respect of the said ——— shares and shall observe and perform all the same rules and the covenants herein contained then the society shall at any time thereafter upon the request and at the cost of the mortgagor endorse upon these presents a proper statutory receipt under their common seal for all moneys intended

to be hereby secured and thereupon these presents shall be vacated AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid the mortgagor as beneficial owner doth hereby covenant with the society that he and all other necessary parties (if any) will forthwith surrender into the hands of the lord of the manor of ——— in the county of ——— according to the custom thereof All that &c. [*parcels*] To the use of the society and their assigns or of any persons or person nominated by the society for that purpose their heirs and assigns according to the custom of the said manor and by and under the rents fines suits and services therefor due and of right accustomed but subject to a condition for making void the said surrender corresponding with the proviso hereinbefore contained for vacating these presents AND ALSO that until such surrender shall be made he and his heirs will stand seised of the same premises in trust for the society and their assigns and subject to the same equity of redemption to which the same would have been subject if so surrendered as aforesaid AND IT IS HEREBY AGREED AND DECLARED that the society may at any time hereafter without any further consent on the part of the mortgagor take possession of the said mortgaged premises or any part thereof and may appoint any person or persons to receive the rents thereof on behalf of the society at such remuneration as the society shall think fit and may lease the said premises or any part thereof for such term or terms of years and upon such conditions and in such manner in all respects as the society shall think fit and may sell the said premises or any part thereof at such time in such manner and upon and subject to such conditions in all respects as the society may deem expedient and may buy in or rescind or vary any contract for sale and re-sell without being responsible for any loss occasioned thereby PROVIDED ALWAYS that the society shall not exercise the aforesaid powers of taking possession

APPENDIX E.

appointing a receiver leasing and sale unless and until default shall have been made for ——— monthly meetings of the society in the payment of some subscription or other moneys which shall have become payable in respect of the said ——— shares according to the rules of the society or in the observance or performance of the said rules or of the covenants herein contained or unless and until the mortgagor shall have become bankrupt or made some composition or arrangement with his creditors PROVIDED ALSO that no such taking of possession appointment of a receiver lease or sale by the society as aforesaid shall be impeachable by reason of the proviso lastly hereinbefore contained and no purchaser lessee or other person dealing with the society shall be bound to inquire if any money is owing on the security of these presents or into the right of the society to exercise any of the said powers AND IT IS HEREBY AGREED AND DECLARED that a receipt under the seal of the society or under the hand of any authorized officer or agent of the society for any money payable to the society by virtue of these presents shall be a good discharge to the person or persons paying the same AND IT IS HEREBY FURTHER AGREED AND DECLARED that the society shall out of the moneys which shall arise from any exercise of the aforesaid powers in the first place discharge all the expenses incurred in or about the collection or receipt of such moneys or otherwise in respect of the premises and in the next place apply such moneys in or towards satisfaction of the moneys owing according to the aforesaid rules in respect of the said shares or otherwise owing on this security (and for this purpose in case of a sale under the power hereinbefore contained all moneys which would at any time afterwards become due in respect of the said shares according to the rules of the society shall be considered as due and owing at the time of such sale) and shall pay the surplus if any to the mortgagor AND IT IS HEREBY AGREED AND DECLARED that Nos. ——— and

——— of the present registered rules of the society or any rules hereafter to be substituted for the same rules respectively having reference to the completion of unfinished buildings and to insurance from loss by fire or such of the same rules respectively as having regard to the nature and intent thereof are capable of applying to this transaction shall apply thereto as if here inserted *mutatis mutandis* and also that the other rules for the time being of the society so far as capable of applying to this transaction and except so far as hereby expressly varied or as inconsistent with any of the provisions of these presents shall also (though not expressly herein referred to) apply to this transaction AND the mortgagor hereby covenants with the society that he will during the continuance of this security observe and perform all the rules for the time being of the society relating to or affecting the premises herein comprised AND LASTLY IT IS HEREBY AGREED AND DECLARED that the expression "the mortgagor" shall unless such interpretation be inconsistent with the context be construed to include his heirs executors administrators and assigns IN WITNESS &c.

CONVEYANCE OF AN EQUITY OF REDEMPTION BY AN ADVANCED MEMBER, THE SOCIETY CONCURRING.

THIS INDENTURE made the ——— day of ——— 18— Between A. B. of &c. of the first part the ——— Building Society (hereinafter called the society) of the second part and C. D. of &c. of the third part WHEREAS by an indenture of lease dated &c. and made between E. F. of the one part and the said A. B. of the other part All that &c. [*parcels from the lease*] were demised unto the

APPENDIX E.

said A. B. from the ——— day of ——— for the term of ——— years at the yearly rent of £——— and subject to the covenants by the lessee and conditions therein contained AND WHEREAS by an indenture of mortgage dated the ——— day of ——— and made between the said A. B. of the one part and the society of the other part the hereditaments and premises comprised in and demised by the said indenture of lease were demised unto the society for all the residue then unexpired of the said term granted by the said indenture of lease (except the last three days thereof) by way of mortgage for securing the discharge by the said A. B. in accordance with the rules and bye-laws of the society of the sum of £——— being the full amount of his ——— advanced shares and one-third of another of such shares therein with agreed premium thereon and of all subscriptions fines interest and other sums if any which before such discharge might become payable by the said A. B. to the society upon any shares whether under those presents or in any other way AND in the indenture now in recital are contained certain powers of distress and entry upon the said premises and of perception of the rents and profits thereof and of demising and selling the same and certain other powers to take effect in the events therein mentioned AND WHEREAS the amount now required to redeem the said recited mortgage security in accordance with the rules and bye-laws of the society is the sum of £——— and no more AND WHEREAS the said A. B. has agreed with the said C. D. for the sale to him of the said premises subject to the said mortgage debt and for the transfer to him of his said advanced shares in the society for the sum of £——— and with his approval has applied to the directors of the society to permit such transfer and to release him from future liability under the said recited indenture of mortgage and to accept that of the said C. D. in lieu thereof which the said directors have agreed to do and that the society should join herein AND WHEREAS the

said A. B. has transferred his said advanced shares in the society to the said C. D. before the execution hereof Now THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £——— to the said A. B. paid by the said C. D. upon the execution hereof (the receipt whereof the said A. B. doth hereby acknowledge) and also in consideration of the said C. D. taking upon himself the said mortgage debt so due to the society as aforesaid He the said A. B. as beneficial owner doth hereby assign unto the said C. D. his executors administrators and assigns All the said hereditaments and premises by the said indenture of lease expressed to be demised To hold the said premises unto the said C. D. his executors administrators and assigns for the residue of the said term of ——— years At the rent and subject to the covenants by the lessee and conditions in the said indenture of lease reserved and contained and henceforth to be paid performed and observed And also subject to the said indenture of mortgage and to the term thereby created and to the payment of all moneys intended to be thereby secured AND the said C. D. doth hereby covenant with the said A. B. that he the said C. D. his executors administrators or assigns will henceforth pay the rent reserved by and perform all the covenants by the lessee and conditions contained in the said indenture of lease and keep the said A. B. his heirs executors and administrators indemnified against all proceedings costs damages claims demands and liability for non-payment of the said rent or breach of the said covenants or any of them AND the said C. D. doth hereby covenant with the society their successors and assigns that he the said C. D. his executors administrators or assigns shall and will from time to time and at all times hereafter during the continuance of the said mortgage security duly and punctually pay or cause to be paid to the person at the times and in manner therein mentioned the several monthly subscriptions and payments

APPENDIX E.

therein mentioned and provided for until the whole of the moneys intended to be thereby secured shall be fully paid to the society or discharged in accordance with the rules and bye-laws of the society in that behalf And shall and will in all other respects well and truly observe and perform fulfil and keep all and every the covenants and agreements in the said hereinbefore recited indenture of mortgage contained on the part of the said A. B. his heirs executors administrators or assigns so far as the same now remain to be observed and performed fulfilled and kept And moreover that nothing herein contained shall in any way preclude or prejudice the exercise of the powers of sale or any other of the powers contained in the said recited indenture of mortgage or the trusts and provisoes ancillary thereto but that the same shall be exercisable in all respects as if the society had not joined in these presents And the society in consideration thereof do hereby release unto the said A. B. his heirs executors and administrators all claims suits and causes of suit whatsoever in respect of the said recited indenture of mortgage without prejudice nevertheless to any existing liability on his or their part for anything done or omitted to be done by him contrary to the covenants contained in the said recited indenture of mortgage up to the day of the execution of these presents IN WITNESS &c.

INDEX.

ABATE, action does not, on death, &c., of trustees, 112, 334.

ABSENCE of trustees, 116, 264.

ACCOUNTS,
- audited, may be impeached for fraud, 68.
- annual statement of, 50, 68, 129, 144, 271, 341.
- negligence of society in examining, does not bar claim to priority, 118.
- officers to render, 88, 111, 263, 329.
- copy of, must be sent to members, &c., 50, 68, 129, 144, 271, 341.
- rules must provide for audit of, 28, 260.
- penalty for default in sending, to registrar, 51, 273.
- adopting, effect of, 69.

ACKNOWLEDGMENT,
- for deposit or loan, endorsement on, 54, 56, 259.
- penalty for default in endorsing, 51, 273.

ACT. See STATUTES.

ACT OF SEDERUNT, 312, 317.

ACTION,
- rights of, of unincorporated society are vested in trustees, 109, 333.
- vesting of, on incorporation, 16, 265, 278.
- how brought and defended, 62, 333.
- disputes, when to be settled by, 164, 180, 194.
- staying of, pending settlement of dispute, 183.

ACTUARY, central office may obtain assistance of, 23.

ADDITIONS, to rules, mode of making, must be prescribed, 28, 260.

ADDRESS, official, of registrar, 25.

ADMINISTRATION,
- meaning of, for Scotland, 19, 256.
- payment of small sums without, 134, 144.

ADMINISTRATOR,
of officer must deliver up papers, &c., 88, 111, 263.
payment of surplus sale moneys to, 134, 155, 266.

ADMITTANCE,
of society or trustees to copyholds, 48, 265.
on union or transfer, 50, 278.

ADVANCE,
may be made to member, 1, 3, 4, 145.
security for, 36—39, 146.
nature of, 145.
tacking further, 173.

ADVANCED MEMBER,
position of, generally, 1, 3, 4, 146.
right of, to vote for the county, 177.
winding-up, in, position of, 158, 223—236.
redemption by, 147, 148, 223.
bankruptcy of, claim for interest on, 153.
may deduct income tax, 165.
death of, intestate, leaving infant heir, 134, 155, 266.
not bound to arbitrate, 164, 180—183.
liability of, 124—128, 158, 159, 223, 228.
how far bound by alteration of rules, 156—158, 235.
may be foreclosed, 160.
past, 228.
And see MORTGAGES.

ADVOCATE, duties of, to be performed by registrar, 256, 257.

AFFAIRS, annual statement of, 50, 68, 129, 144, 271, 341.

AGREEMENT,
forms of, rules may prescribe, 28, 64, 262.
to stifle prosecution, 92.

ALTERATION,
of rules of unincorporated society, 19, 63, 325.
of incorporated society, 42—45, 261.
rules must provide as to, 28, 260.
must be registered, 42, 262.
advanced member, how far bound by, 156.
partial and complete, 43, 44, 283.
withdrawing member, how far bound by, 137.
fee payable on, 44, 287, 344.
of place of meeting, 65, 326.
of chief office, 40, 277.
of instrument of dissolution, 205, 285.
of name, 41, 262.
fee payable on, 42, 287.

AMALGAMATION. See UNION.

AMENDMENT of resolution, 132.

ANNUAL STATEMENT,
of affairs of unincorporated society, 68, 341.
incorporated society, 50, 129, 271.
penalty for not returning, to registrar, 51, 273.
must be sent to members, &c., 50, 68, 271.
effect of adopting, 69.

APPEAL,
from arbitrators, County Court, or registrar, none, 186, 189, 190, 270.
from order of justices, none, 193, 341.

APPLICATION,
for certificate of incorporation, 15, 27, 257.
to transfer stock, 47, 264.
to register alteration of rules, 43, 44, 261.
to settle dispute, 186, 190, 269, 270.

APPOINTMENT,
of officers, 28, 109.
of person to convey, 330.
of committees, 110, 327.
of trustees for purposes of dissolution, 202, 268.
of agent, not liable to stamp duty, 53, 70, 272, 342.
of arbitrators, 184, 185, 269, 338.
of trustees for purpose of investments, 46, 264.
of new trustees of unincorporated society, 113, 330.

ARBITRATION,
reference to, in unincorporated society, 190—192, 338, 345.
in incorporated society, 179, 184—188, 269, 270.
where either party declines to refer dispute to, 186.
what disputes referable to, 164, 180.
form of award, 191.
Arbitration Act, 1889, applies to, 187, 198.

ARBITRATORS,
reference to, in *incorporated* society, 179, 184—188, 269, 270.
decision of, final, 186, 270.
may grant discovery, 186, 270.
statement of case by, 186, 270.
refusing or neglecting to proceed, 186, 190.
appointment of, 184, 185, 269.
enforcing award of, 186, 190, 269.
reference to, in *unincorporated* society, 190—192, 338, 345.
appointment of, 184, 191, 269.
enforcing award of, 191, 269.
must give notice, 199.
may refuse to hear counsel, 199.
award of, Court cannot alter, 199.
death of, 184, 191, 269.

ASSIGNMENT,
property vests without, on incorporation, 16, 265, 278.
on union or transfer, 49, 50, 278.

ASSISTANT REGISTRARS, 23—25.

ATTORNEY, power of, exempt from stamp duty, 53, 70, 272, 342.

AUDIT, annual, must be made, 50, 68, 271, 341.

AUDITORS,
rules must provide for appointment of, 28, 68, 260.
duties of, 105, 106.
liability of, for negligence, 106.

AUTHENTICATION OF DOCUMENTS, 25, 26, 262, 288.

AWARD,
cannot be altered by the Court, 186, 199.
how enforced, 186, 269.
form of, 191.
is final, 186, 270.

BAILEE, officer of society, when in position of, 114, 115.

BALANCE SHEET,
effect of adopting, 69.
false, liability for, 105.

BALLOT, for choice of arbitrators, 184, 191, 269, 338.

BANK OF ENGLAND, indemnity to on transfer of stock, 48, 265, 332.

BANK OF IRELAND, indemnity to, on transfer of stock, 48, 265.

BANKING ACCOUNT, overdrawing, is borrowing, 56, 85.

BANKRUPTCY,
claim for interest in, 153.
unincorporated society has no priority in, 117.
of advanced member, 153.

BANKRUPTCY ACT, 1883..154.

BARRISTER, registrar of friendly societies substituted for, 22, 256, 257.

BILL OF EXCHANGE, liability of officer of society on, 102, 103.

BOARD OF DIRECTORS,
generally, 93—103.
rules must provide as to appointment, &c., of, 28, 260.
are not trustees, 94.

BOARD OF DIRECTORS—*continued.*
powers of, 94—101.
may require accounts, &c., from officers of society, 88, 94, 263.
may appoint trustees for purposes of investment, 46, 94, 264.
application by, to transfer stock, 47, 94, 264.
may pay small sums on intestacy, 94, 266.
liability of, for exceeding borrowing power, 57—61, 81, 274.
generally, 100, 101.
on bills and notes, 102, 103.
allowance of commission to, improper, 101.
powers and duties of, must be prescribed by rules, 28, 260.
ratification of acts of, 69.
resignation of, 102.

BOARD OF INLAND REVENUE, arrangement with, as to income-tax, 166.

BOND,
officer dealing with money must give, 86, 109, 263.
form of, 29, 87.
how sued upon, 88, 110.
not liable to stamp duty, 53, 70, 71, 272, 342.

BONUS,
not obnoxious to usury laws, 320.
advanced member may be entitled to, 8.
to directors, 101.

BOOKS,
rules of unincorporated society to be entered in, 63, 324.
deposit, indorsement on, 54, 56, 259.
are evidence of membership, 123.

BORROW,
power of incorporated society to, 54—57, 259.
permanent society, 55, 259.
terminating society, 55, 259.
limits of power to, how ascertained, 55.
overdrawing is borrowing, 56, 85.
liability of directors for exceeding power, 57—61, 274.
power of unincorporated society to, 73—85.
depends on rules, 73.
members not personally liable for money borrowed, 76.
where rules contain an *unlimited* power, 73—76.
borrowed money to "be a first charge," 75.
deposits, 75.
where rules contain *no* power, 76—82.
subrogation, 79.
money improperly borrowed cannot be repaid, 80.
security for previous loan given after borrowing powers obtained is bad, 80.
liability of directors for money improperly borrowed, 81 *et seq.*
where rules contain a *limited* power, 83—85.

BORROWED MONEY,
improperly borrowed, cannot be repaid, 80.
to be a first charge, effect of provision for, 75.
personal liability of members for, 76.

BORROWING, overdrawing banking account is, 56, 85.

BORROWING MEMBER. See ADVANCED MEMBER.

BORROWING POWER,
loan not validated by subsequent creation of, 80.
limited, not to be exceeded, 83.

BOWKETT SOCIETIES, 3.

BREACH OF RULES, by directors, effect of, 129.

BUILDING SOCIETIES,
definition of, 1.
different classes of, 2, 12.
permanent, 2, 3.
terminating, 2.
Starr-Bowkett, 3.
Bowkett, 3.
nature and operations of, 1—11.
incorporated, 18—21.
unincorporated, 12—15.
a diminishing class, 18.
incorporated and unincorporated, distinction between, 11.
unregistered, 20.
distinguished from freehold land societies, 2.
are not partnerships or companies, 1, 219, 220.
business of, may be carried on by company, 21.
mortgages to, 145—178.
termination of, 200, 267.
dissolution of, 201—205, 267.
winding up of, 205—253.
purposes and powers of, 36—85.
borrowing powers, 54—61, 73—85, 259.
formation of, 27.
rules, 27, 259.
Trust Investment Act, 1889, does not apply to, 46.
name of, 31, 32, 261, 263.
priority of, over other creditors of officer, 116—118, 346.
annual statement of accounts, 50, 68, 271, 341.
Forged Transfers Act, 1891, applies to incorporated, 53.

BUSINESS,
penalty for commencing, without certificate of incorporation, 31, 273.
place of meeting for, rules must specify, 27, 259.
premises for conducting, may be acquired, sold, &c., 40, 270.

CASE, for the Supreme Court, statement of, by arbitrator, 186, 270.

CENTRAL OFFICE, 23, 25.

CERTIFICATE,
of registrar that rules conform to law, 64, 344.
how far conclusive, 33.
of incorporation, 12—16.
form of, 30.
application for, 15, 16, 27, 257, 258, 289.
evidence, 25, 31, 262.
cannot be declared void for irregularity, 17, 18.
how obtained, 15, 16, 30, 257, 258.
fee for, 17, 31.
penalty for commencing business without, 31, 273.
fees, 17, 287.
of change of name, 41, 279.
of change of chief office, 40, 279.
of registration of instrument of dissolution, 202, 268.

CHAIRMAN, authority of, at meeting, 132.

CHANGE,
of place of meeting, 65, 326.
of name, 41, 42, 262.
of chief office, 40, 277.

CHANNEL ISLANDS, Building Societies Acts do not extend to, 20.

CHARGE,
for print of rules, 31, 261.
further, how vacated, 167—177.
borrowed money to be a first, provision for, 75.

CHARITY, shares might be bequeathed to, 124.

CHEQUE, trustees signing, liability of, 115.

CHIEF OFFICE,
society may change, 40, 277.
notice of change of, 40, 277.

CLERK OF SOCIETY, rules must be countersigned by, 64, 343.

CLERK OF THE PEACE,
registrar substituted for, 13.
must transmit rules to registrar, 257.

COLLATERAL SECURITY, may be taken for advance, 38, 146.

COMMENCEMENT,
of business without certificate of incorporation, 31, 273.
of dissolution or winding up, notice of, to registrar, 205, 206, 268.

COMMISSION, allowance of, to directors, improper, 101.

COMMITTEE,
appointment of, by unincorporated society, 110, 327.
of management, 93—103.
And see BOARD OF DIRECTORS.

COMMON SEAL,
rules to make provision as to, 28, 260.
use and custody of, 28, 103.

COMPANIES ACTS,
winding up under, of incorporated society, 205—209.
unincorporated society, 209—218.

COMPANY. See JOINT STOCK COMPANY.

COMPLAINT,
by registrar, for recovery of penalty, 31, 274.
by society in case of fraud, 90, 111, 267.

COMPOUND INTEREST,
allowance of, to withdrawing members, 248.
on fines, 142.

CONSENT to dissolution of society, 201, 204.

CONSOLIDATION, 158.

CONVEYANCE,
forms of, may be prescribed by rules, 28, 262, 320.
vesting of property without, on incorporation, 16, 265, 278.
not necessary on appointment of new trustee under old law, 112, 333.
on union or transfer, 49, 50, 278.
of equity of redemption, form of, 371.

COPY,
of rules to be supplied on demand, 31, 261.
of rules to be evidence, 31, 45, 262.
of annual accounts to be sent to members, &c., 50, 68, 129, 144, 271, 341.
of rules exempt from stamp duty, 53, 70, 272, 342.
of accounts to be suspended in the office, 51, 271.

COPYHOLDS,
mortgage of, society may invest on, 46, 264.
admittance to, of incorporated society or trustees, 48, 161, 265.
mortgage of, discharged by receipt, 167, 272.

CORPORATE BODY,
society to be, 16, 30, 257.
society may borrow from, 54, 259.

COSTS,
of action for redemption or foreclosure, 161—164.
security for, in winding up, 252.

COUNSEL,
assignment of, 332.
arbitrators may decline to hear, 199.

COUNTY, vote for, in respect of property mortgaged to society, 177.

COUNTY COURT,
defined as "Court" in Building Societies Act, 1874...256.
settlement of disputes by, 179, 190, 270.
may wind up incorporated society, 206, 268.
may enforce award, 186, 269.
receives certificate of incorporation as evidence, 262.
may order delivery up by officer of books, &c., 88, 89, 263.
may grant discovery, 190, 270.
may state case for the opinion of the Supreme Court, 190, 270.
decision of, is final, 190, 270.

COUNTY COURT RULES, 1889...89, 190, 206.

COURT,
definition of, in Building Societies Act, 1874...19, 256.
Supreme, case may be stated for the opinion of, 186, 190, 270.
High, winding up of unincorporated society by, 215.

CREDITORS,
judgment, for 50*l.* may petition for winding up of incorporated society, 206, 268.
may petition for winding up of unincorporated society, 217.
withdrawing members are not, 137.
annual statement of accounts must be sent to, 50, 271.
union or transfer not to prejudice, 50, 269, 278.

CUSTODY,
of mortgage deeds, rules to provide for, 28, 260.
of seal, rules must provide for, 28, 103, 260.

DEATH,
of advanced member intestate leaving infant heir, 134, 266.
payment on, to persons appearing to be entitled, 134, 144, 266.
of arbitrator, 184, 191, 269, 338.
of trustee, 112, 116.
of officer, priority in case of, 116—118.

DEBT,
discharge of, by statutory receipt, 175, 272.
due from deceased officer, priority of, 116, 346.

DECEASED MEMBER,
payment of share of, to persons appearing to be entitled, 134, 144, 266.
advanced, intestate leaving infant heir, 134, 266.

DECLARATION. See STATUTORY DECLARATION.

DECREE,
for redemption, 147.
for sale in lieu of foreclosure, 160.
for foreclosure, 160.

DEDUCTION of income tax by advanced member, 165.

DEEDS,
deposit of, to secure banking account, 56.
auditors must inspect, 50, 106, 271.
custody of, rules must provide for, 28, 260.
registered, discharge of, by statutory receipt, 167, 272.

DEFAULT in forwarding returns to registrar, 51, 273.

DEFINITIONS,
"registrar," 22, 256.
"Court," 19.
"terminating society," 2, 256.
"permanent society," 3, 256.
"disputes," 180, 280.
in application of Act of 1874 to Scotland and Ireland, 19, 256.

DELIVERY of books, papers, &c. by officers of society, 88, 111, 263, 329.

DENOMINATIONS, shares in incorporated societies, may be of different, 36, 119, 258.

DEPOSIT,
of deeds to secure advance, 54, 56, 74.
book, endorsement on, 54, 259.
power of society to receive, 54, 75, 259.
receipt for, not liable to duty, 53, 70, 272.
excessive, liability of directors for, 57, 81, 274.
made before 1874, confirmed, 54, 259.

DEPOSITOR,
annual statement of accounts to be sent to, 50, 271.
death of, intestate, 134, 265, 266.
not entitled to priority over other creditors, 248.

DETERMINATION OF DISPUTES,
in unincorporated society, 190—199, 338—341, 345.
in incorporated society, 179—190, 269, 270.
rules must provide for, 28, 260.

DEVICE of seal, rules must provide as to, 28, 260.

DIRECTORS, 93—103. And see BOARD OF DIRECTORS.

DISCHARGE,
of mortgage or further charge, 167—177, 272, 321.
of mortgage debt, 167, 175, 272.

DISCOUNT given by member for advance, 4.

DISCOVERY,
power to grant, in case of dispute, 186, 189, 190, 270.
order for, form of, 310.
fee for, 288.

DISMISSAL of officer, no remedy for, by mandamus, 90.

DISPUTES,
rules must provide for settlement of, 28, 30, 260.
between society and mortgagor cannot be referred, 164, 180.
settlement of, in *incorporated* society, 179—190, 269, 270.
by arbitrators, 179, 184—188, 269, 270.
by registrar, 179, 189, 269, 270.
by County Court, 179, 190, 270.
determination of, final, 186, 189, 190, 270.
meaning of term, 180—183, 280.
submission of, to registrar, form of, 308.
discovery, power to grant, in case of, 186, 189, 190, 270.
statement of case for Supreme Court, 186, 189, 190, 270.
settlement of, in *unincorporated* society, 190—199, 338—341, 345.
what are, within the Acts, 193—197.
reference of, to arbitrators, 190, 339.
to justices, 192, 340.
award, form of, 191.
claim against officer is not, 89, 181.
with withdrawing member, 137, 183, 185.

DISSOLUTION,
of incorporated society, 200—205, 267, 268.
notice of termination of, to registrar, 205, 268.
in manner prescribed by rules, 201, 267.
by instrument of, 201, 202, 267.
societies may unite with or without, 49, 268, 278.
society in process of, may consent to use of name, 31, 32, 41, 261.
fee to registrar, 205.
conveyance of legal estate by trustee under instrument of, 202.

DISTRIBUTIONS, payment to persons apparently entitled under Statute of, 134, 144, 266.

DIVIDEND not to be paid till share realised or withdrawn, 143.

DOCUMENTS,
discovery of, 186, 189, 190, 270.
authentication of, by registrar, 25, 26, 262, 288.
exempt from stamp duty, 53, 70, 272, 321, 342.

DRAFT, stamp duty payable on, 70, 72.

DUTIES, exemption from stamp, 53, 70, 272, 321, 342.

ELECTION, right of advanced member to vote at, 177, 178.

ENGAGEMENTS, transfer of, to another society, 49, 268, 278.

ENGLAND,
meaning of "Court" in, 256.
Bank of, indemnity to, 48, 265.
registrar in, 22, 23, 25, 255.

ENROLMENT, to be sent to registrar, 257.

ENTRANCE FEE, 120.

EQUITY OF REDEMPTION,
conversion of, 134, 155.
reconveyance to owner of, 167 *et seq.*
form of conveyance by advanced member, 371.

ESTABLISHMENT OF SOCIETY,
purpose of, to be declared by the rules, 27, 260.
under Act of 1874...27, 261.

EVIDENCE,
of rules, 45, 262.
of registration, 25, 31, 262.
of death of member, 134, 266.
of documents under Act of 1874...25, 26, 31, 262, 288.

EXAMINATION of officers' accounts, 88, 111, 263, 329.

EXCHANGE of society's business premises, 40, 270.

EXECUTOR,
may execute mortgage to a building society, 123, 164.
of officer must account, deliver up books, &c., 88, 263, 329
married woman, 121.
is not a "person claiming on account of any member," 198.

EXEMPTION,
from stamp duties, 53, 70, 272, 321, 342.
does not extend to mortgages, 53, 70, 272.

EXPULSION of member, 193, 345.

FEES,
Table of, in Treasury Regulations, 287, 288.
Secretary of State may make regulations as to, 274.
on admission to copyholds, 48, 265.
on satisfaction of mortgage, 168, 273.

FILE, enrolments to be taken off, 257.

FINES,
must in unincorporated society be "reasonable," 140, 319.
unpaid may carry interest, 142, 164.
rules must provide for imposition of, 28, 129, 261.
fraud punishable by, 90, 111, 267, 335.
on admission to copyholds, 48, 49, 265.

FORECLOSURE,
society entitled to decree for, 160.
sale in lieu of, when directed, 160.
land acquired by, must be sold, 36, 164, 258.

FORFEITURE,
for non-payment of subscriptions, not unreasonable, 143.
rules must provide as to, 28, 261, 319.

FORGED TRANSFERS ACT, 1891...53, 134.

FORMS,
Of conveyance, &c., rules may prescribe, 28, 64, 262.
Of award, 191, 310.
Of application for certificate of incorporation, 289, 291.
for registration of alteration of rules, 293, 294.
for direction to transfer stock, 298.
Of bond, 29, 87, 109.
Of certificate of incorporation, 30.
of registration of instrument of dissolution, 304.
of registration of change of name, 279.
of registration of alteration of rules, 279.
of alteration of chief office, 279.
Of direction to transfer stock, 301.
Of receipt for money due on mortgage, 168.
Of instrument of dissolution, 202, 302.
Of statutory declaration on application for certificate of incorporation, 290.
on change of name, 297.
on transfer of stock, 300.
on execution of instrument of dissolution, 303.
Of order for discovery, 310.
Of notice to registrar of change of name, 296.
of commencement of dissolution, 304.
of winding up, 305.
of termination of dissolution, 305.
of winding up, 306.
of union of societies, 306.
of transfer of engagements, 307.

FORMS—*continued.*
Of notice of hearing of dispute, 309.
of change of chief office, 311.
Of submission of dispute to registrar, 308.
Of rules, 347—362.
Of mortgage of leaseholds, 363.
of freeholds and copyholds, 368.
Of conveyance of equity of redemption, 371.

FRAUD,
impeaching audited accounts for, 68, 106.
in withholding money, &c., of society, penalty for, 90, 111, 112, 267, 335.

FREEHOLD LAND SOCIETY,
distinct from building society, 2.
building society acting as, 66.

FRIENDLY SOCIETIES ACTS, provisions of, extended to building societies, 22, 320.

FUNDS OF SOCIETY,
advances made out of, 145.
investment of surplus, 45, 46, 65, 111, 264, 328.
manner of raising, must be prescribed by the rules, 28, 259, 260.

FURTHER ADVANCE, tacking of, 173.

FURTHER CHARGE, vacating, by statutory receipt, 167, 169, 272, 321.

GENERAL MEETING,
authority of, requisite to application for certificate of incorporation, 15.
special, what is, 131.
may alter rules, 42, 261, 325.
manner of calling, rules must prescribe, 28, 131, 260.
place of, may be altered, 65, 326.
rules must specify, 65, 325.
officers bound to summon, 63.
powers of, 129—131.
chairman of, 132.
mode of voting at, 132.
amendment may be moved at, 132.
cannot alter rights of members, 128.

GUARANTEE SOCIETY, security of, officer may give, 86, 263.

HEIR, death of advanced member intestate leaving infant, 134, 155, 266.

HUSBAND AND WIFE, determination of questions between, 121.

IDENTITY of names of societies, 31, 32, 263, 285.

INCOME TAX,
advanced member may deduct, 165.
arrangement as to, with Inland Revenue, 166.

INCORPORATED SOCIETIES, 18, 19.
object of, 36.
dissolution of, 201.
winding-up of, 206—209.
liability of members of, 124, 258.
statutes relating to, 255—281.

INCORPORATION,
of society, 15—17, 27—30, 257, 276.
certificate of, application for, 15, 27—30, 257, 276.
form of, 30.
Court cannot declare void for irregularity, 17.
fee for, 17, 31.
penalty for acting without, 30, 51, 273.
vesting of property on, 16, 265, 278.
evidence of, 31, 262, 288.

INDUSTRIAL AND PROVIDENT SOCIETY, may become a member, 123.

INFANT,
may be a member, 120, 139, 271, 341.
may not vote or hold office in incorporated society, 120, 271.
heir, death of advanced member leaving, 134, 155, 266.

INJUNCTION, Court may grant, pending a reference, 183, 184.

INLAND REVENUE, arrangement with Board of, as to income tax, 166.

INSPECTION,
of documents in custody of registrar, fee for, 288.
of mortgages, &c., by auditors, 28, 106, 271.

INSTALMENTS,
repayment of advance by, 145, 152.
right to pay by, in winding-up, 233.

INSTRUMENT OF DISSOLUTION, 201—205, 267, 302.
alterations in, 205, 268.
signature of, 204, 267.
registration of, 202, 268.
form of, 202, 302.
withdrawing members must execute, 203.
exempt from stamp duty, 53, 70, 272, 321, 342.

INTEREST,
on fines, 142, 164.
claim for, in bankruptcy of mortgagor, 153.
premium is not, 154, 165.
future, when allowed, 149, 150.
deduction of income tax from, 165.
not affected by usury laws, 320.
withdrawing members when entitled to, 246, 247, 248.
prospective, not to be included in annual statement, 50, 52, 271.
"guaranteed by authority of Parliament," 46.

INTESTACY,
payment of small sums on, 134, 144, 265, 266, 335.
of advanced member, leaving infant heir, 134, 155, 266.

INVESTING MEMBERS,
position of, in winding-up, 1, 4, 9, 221—223.
withdrawal of, 135—139.

INVESTMENT,
unauthorized, 47, 65.
of surplus funds, 45, 46, 65, 66, 111, 264, 328.

IRELAND,
definition of "Court" in, 19, 256.
Bank of, transfer of stock at, 47, 48, 264.
indemnity to, 265.
fee on discharge of mortgage in, 168, 273.
application to, of Building Societies Acts, 19, 256.
assistant registrar for, 23, 24.

JOINT OWNERSHIP, of shares, 122, 271.

JOINT STOCK COMPANY,
building society is not, 1, 220.
society may borrow from, 54, 259.
may carry on business of building society, 21.
power of, to become a member, 122.

JOINT TENANTS, new and continuing trustees are, 112, 113.

JURISDICTION of High Court in cases of dispute between society and member, 180—184, 193—198.

JUSTICES OF THE PEACE,
reference of disputes to, 191, 192, 340, 345.
order of, final, 193, 341.
settlement of disputes by, 192, 340.
may enforce award, 191, 339.
may punish for fraud, 111, 335.

LAND,
power of unincorporated society to buy, 65, 66.
holding of, by incorporated society, 40.
acquired by foreclosure, &c., must be sold, 40, 164, 258.

LAND TRANSFER ACT, 1875,
registered charge under, 161.
rules under, 161.

LEASE,
power of society to take land upon, 40, 270.
power of society to grant, 29, 40.

LEASEHOLD,
investment of surplus funds on security of, 46, 65, 264.
lending to members on security of, 37, 146.

LEGALITY of rule, certificate how far conclusive of, 33, 34.

LIABILITY,
of trustees, 113—115, 334.
on bills and notes, 102.
of members of unincorporated society, 221.
of members of incorporated society, 124—128, 258.
of advanced members, 124, 223, 258.
of investing members, 124, 221, 258,
of directors, 94—101.
for money borrowed in excess of power, 57, 81, 103, 274.
to penalties for breach of Act of 1874...51, 273.
of secretary, 105.
of auditor, 106.
for refusal to allow deduction of income tax, 165.

LIMITATION,
of liability of officers of unincorporated society, 113, 334.
of liability of members, 124—128, 221, 223 *et seq.*, 258.
of borrowing power of incorporated society, 54, 259.
rules of unincorporated society may authorize borrowing without, 73, 74.

LIQUIDATOR,
appointment, powers, and duties of, in Scotland, 315.
vesting order, 213, 250.
sale by, of mortgaged property, 251.

LOANS,
to unincorporated society, 73—85.
to incorporated society, 54—61, 259.
liability of directors for excessive, 57, 274.
made before November 2nd, 1874, valid, 54, 259.
to terminating society, 54, 259.
to permanent society, 54, 259.
made between November 2nd, 1874, and April 22nd, 1875...82.
not validated by subsequent creation of borrowing power, 80,

LORD OF THE MANOR, must admit society or trustees, 48, 265.

LUNACY, of trustee, 47, 116.

MAJORITY, at meeting, 131.

MAN, ISLE OF, Building Societies Acts do not extend to, 20.

MANAGER, 103—105. And see SECRETARY.

MANDAMUS, officer dismissed has no remedy by, 90.

MARRIED WOMAN, may be a member, 120, 121, 139.

MARRIED WOMEN'S PROPERTY ACT, 1882...120.

MEETING, 129, 132, 133. See GENERAL MEETING.

MEMBERS,
- rights and liabilities of, 119—143.
- different classes of, 1, 119, 120, 139.
- infants may be, 120, 139, 271, 341.
- executors may be, 123.
- fines and forfeitures may be imposed on, 129, 140—142, 260, 319.
- married women, 120, 139.
- joint, 122, 271.
- joint stock companies, 122.
- industrial and provident societies, 123.
- expulsion of, 193, 345.
- advanced or borrowing, 1, 119, 156, 180, 223.
- withdrawing, 1, 6, 135, 236—248.
- investing, 1, 9, 119, 221.
- liability of, in unincorporated society, 221.
  in incorporated society, 124—128, 221—223, 259.
- bound by rules, 31, 63, 128, 140, 262, 324.
- dying intestate, 134, 144, 155, 266.
- annual statement of accounts to be sent to, 50, 68, 271, 341.
- right of, to county vote, 177.
- may change name of society, 41, 262.
- may alter rules, 42, 261.
- meetings of, 129—133.
- may transfer shares, 133.
- disputes with, settlement of, 179—199.

MINOR. See INFANT.

MISAPPLYING MONEY OR PROPERTY, punishment for, 90, 91, 111, 112, 267.

MISREPRESENTATION, obtaining money of society by, 90, 111, 267.

MONEY,
fraudulently withholding or misapplying, 90, 111, 267.
payment of small sums of, due to deceased members, 134, 144, 155, 266, 335.
arising by sale, surplus of, 155, 266.
officers having charge of, must give security, 86, 109, 263, 326.
officers must pay over, on demand, 88, 111, 263, 329.
improperly borrowed cannot be repaid, 80.

"MONEYS," bequest of, will not carry shares, 124.

MORTGAGES,
generally, 145—178.
security for, 36, 146.
to building societies, nature of, 145, 146.
redemption of, in terminating societies, 147.
in permanent societies, 147, 149.
rules must prescribe terms of, 28, 30, 260.
future interest, when allowed, 149—153.
costs of actions relating to, 161—164.
foreclosure of, 160, 258.
decree for sale, 160.
fines, when treated as principal, 142.
collateral security for, 38, 146.
by charge under Land Transfer Act, 1875...161.
claim for interest under, where mortgagor is bankrupt, 153.
sale under power in, 149, 155.
premium charged on, is not interest, 154, 165.
income tax may be deducted, 165.
arrangement as to, with inland revenue, 166.
subscriptions may be continued after, 159.
executor may execute, 123.
disputes arising out of, cannot be referred to arbitration, 164, 180—183, 280.
statutory receipt on, 167—177, 272, 321.
reconveyance, 169, 170.
stamp duty on, 70, 164, 272, 342.
winding up, effect of, on right to redeem, 223—236.
auditors must inspect, 50, 106, 271.
custody of, rules must provide as to, 28, 260.
of copyholds, 48, 49, 265.
discharge of, 167—177.
register of, should be kept by secretary, 104.
forms of, rules may prescribe, 28, 64, 262, 320.
surplus sale moneys arising under, 155, 266.
meaning of, in Scotland, 19, 256.
forms of, 363, 368.
conveyance subject to, form of, 371.
ordinary law of, applies, 146.
"amount for the time being secured by," 55.
members who have executed, liability of, 124—126, 258.
consolidation, 158.

MORTGAGES—*continued.*
further advance, right to tack, 173.
to secure subscriptions "and other moneys," 158.
executed in ignorance of their contents, 235.

MORTMAIN ACT, share in building society not within, 124.

NAME OF SOCIETY,
change of, 41, 262, 284.
identity or similarity of, 31, 32, 261, 263, 284.
certificate of change of, 41, 279.
rules must specify, 27, 259.
seal must bear, 28, 260.
must end with the words "Building Society," 31, 32, 284.
registered, 32.
retained on incorporation, 19.

NEGLECT,
of society in examining accounts, 118.
of officer to render accounts, &c., 88, 263, 329.

NEGOTIABLE INSTRUMENTS, liability on, of officer of society, 102, 103.

NEXT OF KIN,
payment to persons appearing to be, 134, 144, 266, 335.
conversion in favour of, 134, 155, 266.

NOTICE,
of trust, payment to registered owner without, 123.
from subsequent incumbrancers, 104.
to registrar of change of name, 41, 263, 296.
of commencement of dissolution, 201, 268.
of winding up, 206, 268.
of termination of dissolution, 201, 205, 268.
of winding up, 253, 268.
of union of societies, 49, 269.
of transfer of engagements, 49, 269.
of change of chief office, 40, 277.
of hearing of dispute, 189, 199, 287.
to officer to account, 88, 94, 111, 263, 329.
of the rules, members, &c., deemed to have, 31, 63, 262, 324.

OBJECT of society, rules must state, 27, 260.

OBLIGATIONS OF SOCIETY,
not affected by change of name, 42, 263.
by union or transfer, 50, 269, 278.

OFFICE,
chief, of society, rules must specify, 27, 259.
change of chief, 40, 277.
central, 23.

OFFICERS,
generally, 86—118.
directors, 93—103.
secretary or manager, 103—105.
surveyor, 107.
auditors, 105—107.
solicitor, 107.
power of unincorporated society to appoint, 109.
may not buy mortgaged property sold by society, 92.
duties of, rules must specify, 28, 86, 260.
terms on which services given by, 108.
must summon meeting when required, 63.
must give security, 86, 109, 263, 326.
dismissed, have no remedy by mandamus, 90.
must account, 88, 111, 263, 329.
are bound by the rules, 31, 86, 109, 262.
must deliver up books, &c., of the society, 88, 111, 263, 329.
withholding money or property, 90, 91, 267.
may be ordered to make discovery, 186, 270.
statutory declaration by, as to rules, 42, 257.
remedy of society against, 88, 111, 263, 329.
claim against, is not a "dispute," 89, 181.
priority of unincorporated society over creditors of, 116—118, 346.

OFFICIAL ADDRESS of registrar, 25.

ORDER,
of arbitrators, the Court, or the registrar, is final, 186, 189, 190, 270.
of justices is final, 193, 341.
on officer to deliver up property of society, 89, 111, 263, 329.
for discovery, 186, 189, 190, 270, 310.
or draft, is liable to stamp duty, 72.

OVERDRAWING BANKING ACCOUNT is borrowing, 56, 85.

PAID-UP SHARES may be issued, 36, 119, 258.

PAPERS, officer may be ordered to deliver up, 88, 111, 263, 329.

PARLIAMENT, interest "guaranteed by authority of," 46.

PARLIAMENTARY SECURITIES, investment of surplus funds in, 46, 264.

PARTNERSHIP, building society is not, 1, 220.

PARTNERSHIP ACT, 1890...221.

PAYMENT,
of small sums on intestacy, 134, 144, 155, 266, 335.
officers to give security for, 86, 109, 263, 326.
by instalments after winding-up order, 233.

PENALTY,
must be "reasonable," 140, 319.
for acting without certificate of incorporation, 31, 50, 273.
for default in making returns, 51, 273.
for default in endorsing deposit book, &c., 51, 273.
on directors for exceeding borrowing power, 57, 274.
rules must provide as to, 261.

PERMANENT SOCIETY,
definition and nature of, 3, 10, 11, 256.
borrowing powers of, 54, 259.
mortgages to, 145.
redemption in, 147, 149.

PERSON claiming on account of any member, who is, 198.

PERSONAL ESTATE,
surplus sale moneys to be, 134, 155, 266.
vesting of, on incorporation, 16, 265, 278.

PETITION,
to wind up incorporated society, 206—209.
unincorporated society, 210—218.

PLACE OF BUSINESS,
officers may not alter, 65.
rules of incorporated society must specify, 27, 259.
change of, 40, 65, 277, 326.

POLL may be demanded, 133.

POWER,
to borrow money, of incorporated society, 54—61, 259.
of unincorporated society, 73—85.
to issue preference shares, 27, 36, 119, 258.
to make rules, 42, 62, 261.
of society to hold land, 40, 65, 66, 258, 270, 328.
of officers must be prescribed by rules, 28, 260.
to state case, 186, 187, 189, 190, 270.
to order discovery, 186, 189, 190, 270.
of directors, 94—101.
of society generally, 36—85.
to change its name, 41, 262.
to change its chief office, 40, 277.
to unite with another society, 49, 268, 278.
to transfer engagements, 49, 268, 278.

POWER—*continued.*
of society to dissolve, 201, 267.
to invest surplus funds, 45, 46, 65, 264, 328.
to appoint trustees, 48, 264, 265.

PRECEDENTS,
of rules, 347.
of mortgage of leaseholds, 363.
of freeholds and copyholds, 368.
of conveyance of an equity of redemption, 371.

PREFERENCE SHARES,
power of unincorporated society to issue, 222.
incorporated society may issue, 36, 119, 258.

PREMIUM,
charged for advance is not in the nature of interest, 154, 165.
to be disregarded in applying doctrine of subrogation, 79.

PRINTED COPY,
of rules is evidence, 31, 45, 262.
to be supplied on demand, 45, 261.

PRIOR INCUMBRANCER, notice from, should be kept, 104.

PRIORITY, Barnard v. Tomson, 1894. 1 Ch. 374.
of debts due to unincorporated society, 116—118, 346.
of withdrawn and realized shares, 236.

PROFITS,
sharing, does not involve liability for losses, 224.
none to be paid till realization or withdrawal, 61, 143, 319.

PROMISSORY NOTES, liability of officers of society on, 102, 103.

PROOF,
of documents, 31, 45, 262.
of registrar's signature not necessary, 25, 26, 262, 288.
of death, &c., on transfer of stock by registrar, 47, 285.

PROPERTY,
of society, vesting of, on incorporation, 16, 265, 278.
conveyance of, on union or transfer, 49, 50, 278.

PROSECUTION, agreement to stifle, 92.

PROSPECTIVE INTEREST, not to be included in annual statement, 50, 52, 271.

PROXY, voting by, when allowed, 132.

PUBLIC FUNDS,
trustees may invest in, 46, 65, 264, 328.
stock in, does not vest on incorporation, 16, 265, 278.
on union or transfer, 50, 278.

PUNISHMENT, for fraud on society, 90, 111, 267, 335.

PURCHASE,
of mortgaged property by officer of society, 92, 164.
of land by society, 40, 65, 66, 328.

PURPOSE,
of society, rules must state, 27, 260.
for which societies may be established, 258.

QUO WARRANTO, to try question of incorporation, 17.

REALISATION of share, interest or dividend not payable till, 61, 143, 319.

REALISED SHARES, priority of, 239, 240.

"REASONABLE FINES," 140—142, 319.

RECEIPT,
stamp duty on, 53, 272, 321, 342.
statutory, in lieu of reconveyance, 167—177, 272.
form of, 168.
effect of, on covenants, 174.
for rent, is liable to stamp duty, 71.

RECEIVER, Court may appoint, pending a reference, 183, 184.

RECONVEYANCE,
by statutory receipt, 167—177, 272.
in lieu of statutory receipt, 168, 272.

REDEMPTION,
in terminating society, 147.
in permanent society, 147, 149.
costs of suit for, 161—164.
statutory receipt on, 167—177.
terms of, rules must state, 28, 30, 260.
liability of advanced member on, 226.

"REDEMPTION MONEY," meaning of, 4, 145.

REFERENCE TO ARBITRATION, 184—188, 190—192, 196—199, 269, 338, 345.

REGISTER of mortgages should be kept by secretary, 104.

REGISTERED OWNER, payment to, without notice of trust, 54, 123.

REGISTRAR,
rules to be registered by, 30, 261.
definition of, 22, 23, 255.
determination of disputes by, 189, 269, 270, 287.
of friendly societies, 22—25, 255.
transfer of stock by, 47, 264, 285.
powers and duties of, 13, 22—26.
authentication of documents by, 25, 262, 288.
enrolments to be sent to, 257.
may modify or dispense with forms, 26, 288, 289.
where enrolments not transmitted to, 257.
forms of certificates of, 26, 279, 304.
practice of, as to registering rules, 29.
position of, 22, 26.
chief, 22, 23.
official address of, 25.
assistant, 22, 23, 24.
qualification of, 23.
Scotland and Ireland, 24, 25.
And see NOTICE.

REGISTRATION,
of rules, 29, 30, 44, 261.
evidence of, 25, 262, 288.
of alteration of chief office, 40, 277.
form of certificate, 279.
of alteration of rules, 42, 262.
form of certificate, 279.
of notice of union or transfer effects conveyance, 49, 268, 278.
of change of name, 41, 263.
form of certificate, 279.

REGULATIONS,
power to make, under Act of 1874...20, 274.
issued by Treasury, 20, 282—311.

REMOVAL,
of officers, rules must prescribe manner of, 28, 260.
meeting for, must be duly constituted, 90.
of place of meeting, 65, 326.

REMUNERATION of officers, rules must prescribe, 28, 260.

REPEAL,
of Act of 1836...12, 256.
of sect. 8 of Act of 1874...13, 275.
of part of sect. 44 of Act of 1874...274.

REPRESENTATIVE of deceased member, payment of small sums good against, 134, 144, 266, 335.

RESCISSION OF RULES, 42, 261.
mode of, to be prescribed by rules, 28, 260.

RESIGNATION of director, 102.

RESOLUTION,
terms of withdrawal not to be altered by, 138.
what conditions necessary to validity of, 132.
amendment to, may be moved, 132.

RETURNS,
from building societies, 51.
penalty for default in making, 51, 273.

RIGHTS, held in trust for society vest on incorporation, 16, 265, 278.

RULES,
power to make, 42—44, 63, 261, 325.
exemption of, from stamp duty, 53, 70, 272, 321, 342.
must provide for settlement of disputes, 28, 30, 260.
printed copy of, to be evidence, 31, 45, 262.
alteration of, 42, 43, 63, 129, 261.
advanced members bound by, 156.
withdrawing members bound by, 137.
breach of, by directors, effect of, 129.
purposes of society to be declared by, 27, 260.
must be registered, 30, 261.
must specify whether society is terminating or permanent, 10, 261.
of unincorporated society must be entered in a book, 63, 324.
proof of, 31, 45, 262, 288, 324, 325.
legality of, certificate not conclusive as to, 33.
matters to be set forth in, 27, 28, 259, 260.
are binding on members and others, 31, 63, 128, 140, 262, 324.
must be submitted to registrar, 29, 30, 261.
copy of, to be supplied, 31, 45, 261.
may provide forms of conveyance, &c., 28, 64, 262, 320.
precedent of, 347.
what will be certified, 29.

SALE,
decree for, in lieu of foreclosure, 160.
under power in mortgage, 149, 155.
by liquidator, 251.
officer of society employed in, cannot purchase, 92.

SAVINGS BANKS, society may not invest in, 65, 321.

SCALE OF FEES, 287, 288.

SCHEDULE of forms may be added to rules, 28, 64, 262, 320.

SCOTLAND,
definition of "Court" in, 19, 256.
application to, of Building Societies Acts, 19, 256.
Act of Sederunt for winding up society in, 312—317.
Secretary for, 20.
assistant registrar for, 24, 25.

SEAL,
rules to contain provision for, 28, 259.
use and custody of, 28, 103.

SECRETARY,
duties of, 103, 104.
register of mortgages should be kept by, 104.
liability of, 105.
work ordered by, directors liable for, 103.
And see OFFICERS.

SECRETARY FOR SCOTLAND ACT, 1887...20.

SECRETARY OF STATE,
may make regulations under Act of 1874...20, 274.
regulations issued by, 282—311.

SECURITY,
for deposit or loan, endorsement on, 54, 55, 259.
given to society, auditors must inspect, 50, 106, 271.
must be given by officers, 86, 109, 263, 326.
custody of, rules must provide for, 28, 260.
forms of, may be described in schedule to rules, 28, 64, 262, 320.
stamp duty on bond or other, 53, 70—73, 272, 342.
for advance, 36—39, 146.
collateral, 38, 146.
for loan, when no borrowing power, 80.
society may transfer, 156.

SECURITY FOR COSTS in winding-up, 252.

SEDERUNT, Act of, 312—317.

SETTLEMENT OF DISPUTES,
generally, 179—199.
in incorporated society, 179—190, 269.
rules must provide for, 28, 30, 260.
in unincorporated society, 190—199, 338—341, 345.

SHARES,
value of, in unincorporated society, 61, 139.
no limit to issue of, 120.
liability on, 124—128, 258.

W.

Reduction of Shares. Barnard v. Tomson, 1894. 1 Ch. 374.

SHARES—*continued.*
transfer of, 133.
exempt from stamp duty, 53, 70, 73, 272.
joint holding of, 122, 271.
preference, 36, 119, 222, 260.
paid-up, 36, 119, 260.
registered owner of, payment to, 123.
not within Mortmain Act, 124.
when liable to arrestment, 124.
do not pass under bequest of "moneys," 124.
advance on security of, illegal, 146.
may be transferred, 133.

SHERIFF COURT,
jurisdiction of, 19, 256.
winding-up in, 206, 312.

SHOW OF HANDS, voting by, 132.

SIGNATURE,
of rules proposed for society, 27, 261, 262.
to instrument of dissolution, 203, 204.

SIMILARITY of names of societies, 31, 32, 261, 284.

SOCIETY. See BUILDING SOCIETY.

SOLICITOR, 107.

SPECIAL MEETING, 131, 260.

STAMP ACT, 1891...70, 165.

STAMP DUTY,
exemption from, 53, 70, 73, 272, 321, 342.
on mortgages, 70, 164, 272.

STARR-BOWKETT SOCIETIES, 3.

STATEMENT OF AFFAIRS,
of unincorporated society, 68, 341.
of incorporated society, 50, 271.
must be sent to members, creditors, &c., 50, 51, 68, 271, 341.
penalty for default in forwarding, to registrar, 51, 273.
effect of adopting, 69.

STATEMENT OF CASE,
for the opinion of the Supreme Court,
by arbitrators, 186, 270.
on direction of High Court, 186, 187.
by registrar, 189, 270.
by County Court, 190, 270.

STATUTES,
9 Geo. 2, c. 36 (Mortmain Act), 124.
10 Geo. 4, c. 56 (Friendly Societies, 1829), 323–342.
3 & 4 Will. 4, c. 42 (Interest), 246.
4 & 5 Will. 4, c. 40 (Friendly Societies, 1834), 343—346.
6 & 7 Will. 4, c. 32 (Building Societies, 1836), 318—322.
16 & 17 Vict. c. 34 (Income Tax), 165.
18 & 19 Vict. c. 63 (Friendly Societies Act, 1855), 91.
25 & 26 Vict. c. 89 (Companies Act, 1862), 51, 102, 206, 221, 250, 252.
26 & 27 Vict. c. 87 (Savings Bank Act, 1863), 117.
31 & 32 Vict. c. 124 (Inland Revenue), 70.
36 & 37 Vict. c. 32 (East India Loan), 46.
37 & 38 Vict. c. 42 (Building Societies Act, 1874), 255—274.
38 Vict. c. 9 (Building Societies Act, 1875), 275, 276.
38 & 39 Vict. c. 60 (Friendly Societies Act, 1875), 22, 89, 170.
c. 87 (Land Transfer Act, 1875), 161.
39 & 40 Vict. c. 45 (Industrial and Provident Societies Act, 1876), 123, 208.
c. 70 (Sheriff Court Act, 1876), 313.
40 & 41 Vict. c. 63 (Building Societies Act, 1877), 277—279.
44 & 45 Vict. c. 41 (Conveyancing and Law of Property Act, 1881), 29.
45 & 46 Vict. c. 75 (Married Women's Property Act, 1882), 120—122.
46 & 47 Vict. c. 52 (Bankruptcy Act, 1883), 117, 154.
47 & 48 Vict. c. 41 (Building Societies Act, 1884), 280, 281.
50 & 51 Vict. c. 52 (Secretary for Scotland Act, 1887), 20.
51 & 52 Vict. c. 43 (County Courts Act, 1888), 209.
52 & 53 Vict. c. 32 (Trust Investment Act, 1889), 46.
c. 49 (Arbitration Act, 1889), 186, 187, 198.
53 & 54 Vict. c. 39 (Partnership Act, 1890), 221.
c. 63 (Companies (Winding-up) Act, 1890), 206, 215, 216.
54 & 55 Vict. c. 39 (Stamp Act, 1891), 70, 165.
c. 43 (Forged Transfers Act, 1891), 53, 134.
55 & 56 Vict. c. 36 (Forged Transfers Act, 1892), 53, 134.

STATUTORY DECLARATION,
on application for certificate of incorporation, 16, 258, 290.
in proof of death intestate, 265.
on alteration of rules, 42, 44, 261, 293.
on change of name, 41, 284, 297.
on transfer of stock, 48, 285, 300.
on dissolution, 202, 285, 303.
registrar may require, in support of statements in submission, 189, 287.
of consent to adoption of name, 31.

STATUTORY POWERS,
of incorporated society, 39—61.
of unincorporated society, 61—73.

STATUTORY RECEIPT, 167—177, 272, 321.

STOCK,
investment in, trustees may be appointed for purpose of, 46, 264.
standing in name of absent, &c., trustee, transfer of, 47, 264, 285, 298, 300, 301.
fee on transfer of, 48, 287.

SUBMISSION TO REGISTRAR, form of, 189, 269, 270, 287.

SUBROGATION,
doctrine of, 79.
right of, where premium paid for advance, 79.

SUBSCRIPTIONS in unincorporated society must not exceed 20*s.* per share per month, 61, 318.

SUMS, payment of small, on death of member, 134, 144, 265, 266, 335.

SUPREME COURT, power to state case for opinion of, 186, 189, 190, 270.

SURPLUS FUNDS, investment of, 45, 46, 65, 66, 111, 264, 328.

SURRENDER, land acquired by, to be sold, 40, 258.

SURVEYOR,
generally, 107, 108.
directors not liable to, for work done for society, 108.

TACKING of further advance, 173.

TENANTS,
joint, new and continuing trustees become, 112, 113.
joint, of shares in society, 122, 271.
receipts given to, liable to stamp duty, 71.

TERMINATING SOCIETY,
definition of, 2, 256.
establishment of, 27, 258, 261.
borrowing power of, 54, 259.
may lend to any incorporated society, 54, 259.
termination of, 200, 201.
may invest surplus funds with other terminating society, 46, 264.
mortgages to, 145.
redemption of mortgages to, 147, 148.

TERMINATION OF SOCIETY, 200, 201, 267.

TRANSCRIPT,
of rules to be sent to registrar, 257.
copy of, to be evidence, 325.
when not sent to registrar, 257.

TRANSFER,
of stock standing in name of absent, &c., trustee, 47, 264, 285.
application for, 48, 285, 298.
fee on, 48, 287.
of shares, 133.
pending winding-up, 209.
exempt from stamp duty, 53, 73, 272, 321, 342.
of engagements to another society, 49, 268, 278, 286.
notice of transfer of engagements, 49, 269, 286.

TREASURER,
effects of society to be vested in, without conveyance, 112, 333.
liability of, 113, 334.
must render accounts, 68, 111, 263, 326.

TREASURY REGULATIONS, 282—311.
power to issue, 20, 274.

TRUST INVESTMENT ACT, 1889, does not apply to building societies, 46.

TRUSTEES,
effects of societies to be vested in, without conveyance, 62, 112, 333.
personal liability of, 113—116, 334.
appointment of, for purpose of investment, 46, 264.
admittance of, to copyholds, 48, 265.
fraudulently withholding moneys, &c., 90, 111, 267, 335.
must give security, 109, 263, 326.
surplus funds may be invested in name of, 65, 264, 328.
must render accounts, and pay over balances, 111, 263, 329.
out of jurisdiction, dead, lunatic, &c., person may be appointed to convey, 116.
transfer of stock standing in name of bankrupt, &c., 47, 264, 285, 298—302.
directors are not, 94—101.
married women, 120.
payment by, on death of member, 143, 335.

UNADVANCED MEMBERS, liability of, 124—128, 221, 258.

UNAUTHORIZED INVESTMENT, 47.

UNINCORPORATED SOCIETIES, 12—15, 61—85, 275.
may become incorporated, 15, 257, 276.
borrowing powers of, 73—85.
a diminishing class, 18.
statutes relating to, 318—346.

UNINCORPORATED SOCIETIES – *continued.*
object of, 61.
shares not to exceed 150*l.*, 61, 318.
division of profits, 61, 318.
property of society vested in trustees, 62, 333.
power to make rules, 62, 63, 325.
rules of, must be entered in a book, 63, 324.
position of officers in, 109.

UNION,
of societies, 49, 268, 278, 286.
notice of, must be sent to registrar, 49, 268.
vesting of property on, 49, 50, 278.
creditor's rights not affected by, 50, 278.
fee on, 491.

UNREGISTERED COMPANIES, winding-up of, 210—214.

UNREGISTERED SOCIETIES, 20.

USURY LAWS, not to prevent allowance of bonus or interest, 320.

VACATING MORTGAGE OR FURTHER CHARGE, 167, 169, 272, 321.

VESTING
of property of unincorporated society in trustees for the time being, 62, 333.
of property on incorporation of society, 16, 278.
on union or transfer, 49, 50, 278, 306—308.
vesting order in winding-up, 213, 250.
effect of, 251.

VOTE,
right of advanced member to county, 177.
minor may not, in incorporated society, 120, 271.
mode of voting, 132, 133.

WARRANT OF ATTORNEY, not liable to stamp duty, 53, 70, 272, 342.

WINDING-UP,
of incorporated society, 206—209, 268.
petition for, 206, 268.
County Court, jurisdiction of, 206, 268.
High Court has no jurisdiction, 208.
under supervision, 207.
who may petition, 206, 268.
transfer to High Court, 209.
notice to registrar, 206, 253, 286.
in Scotland, 206, 256, 312—317.
in Ireland, 207, 256.

WINDING-UP—*continued.*
of unincorporated society, 209—218.
jurisdiction of High Court, 215.
of County Court, 215.
transfer of proceedings, 216.
who may petition, 217.
general principles of, 218, 219.
transfer of proceedings, 216.
advanced members, 223—236.
right of, to pay by instalments, 233—235.
investing members, 221—223.
withdrawing members, 236—246.
effect of, on current notices of withdrawal, 241.
realized or completed shareholders, 239.
special case for opinion of High Court, 216.
distribution of surplus assets, 249.
vesting order, 213, 250, 251.
security for costs, 252.
jurisdiction of County Courts, 215.
transfer of shares pending, 209.
depositors not entitled to priority, 248.

WITHDRAWAL,
right of, 135—139.
effect of winding-up order, 236, 241.
notice of, does not prevent arbitration, 137, 183.
conditional notice of, 245.
payment on, to trustee, without notice of trust, 54, 123.
terms of, must be *bonâ fide*, 29.
cannot be altered except by rule, 138, 244.
must appear in rules, 28, 135, 260.

WITHDRAWING MEMBER,
position of, 6, 136, 137, 198.
in winding-up, 236—248.
bound by alteration of rules, 137.
when entitled to interest, 246—248.
bound to arbitrate, 137, 183.
signature of, necessary to instrument of dissolution, 203.

WITHHOLDING MONEY, punishment for fraud in, 90, 111, 267, 335.

recat. 3/76

L

LONDON:
PRINTED BY C. F. ROWORTH, GREAT NEW STREET, FETTER LANE—E.C.

A CATALOGUE

OF

LAW WORKS

PUBLISHED BY

STEVENS AND SONS,

LIMITED,

119 & 120, CHANCERY LANE, LONDON,

(*And at* 14, *Bell Yard, Lincoln's Inn*).

Telegraphic Address—"RHODRONS, London."

A Catalogue of Modern Law Works, *together with a complete Chronological List of all the English, Irish, and Scotch Reports, an Alphabetical Table of Abbreviations used in reference to Law Reports and Text Books, and an Index of Subjects corrected to end of* 1890. *Demy 8vo.* (114 *pages*), *limp binding. Post free,* 6*d.*

Acts of Parliament.—*Public and Local Acts from an early date may be had of the Publishers of this Catalogue, who have also on sale the largest collection of Private Acts, relating to Estates, Enclosures, Railways, Roads, &c., &c.*

ACTION AT LAW.—Foulkes' Elementary View of the Proceedings in an Action in the Supreme Court, with a Chapter on Matters and Arbitrations.—(Founded on "SMITH'S ACTION AT LAW.") By W. D. I. FOULKES, Esq., Barrister-at-Law. Third Edition. Demy 12mo. 1884. *7s. 6d.*

ADMIRALTY.—Roscoe's Admiralty Practice.—A Treatise on the Jurisdiction and Practice of the Admiralty Division of the High Court of Justice, and on Appeals therefrom. With an Appendix containing Statutes, Rules as to Fees and Costs, Forms, Precedents of Pleadings and Bills of Costs. Third Edition. By E. S. ROSCOE, and T. LAMBERT MEARS, Esqrs., Barristers-at-Law. [*In preparation.*

ADVOCACY.—Harris' Hints on Advocacy.—Conduct of Cases Civil and Criminal. Classes of Witnesses and Suggestions for Cross-examining them, &c., &c. By RICHARD HARRIS, one of her Majesty's Counsel. Ninth Edition (with a new chapter on "Tactics"). Royal 12mo. 1889. *7s. 6d.*

"The work is not merely instructive, it is exceedingly interesting and amusing. . . . . We know of no better mode at present of learning some at least of an advocate's duties than in studying this book and the methods of the most distinguished advocates of the day."—*The Jurist.*

"Full of good sense and just observation. A very complete Manual of the Advocate's art in Trial by Jury."—*Solicitors' Journal.*

"Deserves to be carefully read by the young barrister whose career is yet before him."—*Law Magazine.*

"We welcome it as an old friend, and strongly recommend it to the would-be advocate."—*Law Student's Journal.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings,*

AGRICULTURAL LAW. — Spencer's Agricultural Holdings (England) Act, 1883, with Explanatory Notes and Forms; together with the Ground Game Act, 1880. Forming a Supplement to "Dixon's Law of the Farm." By AUBREY J. SPENCER, B.A., Barrister-at-Law, Demy 8vo. 1883. 6*s.*

ALLOTMENTS.—Hall's Allotments Acts, 1887, with the Regulations issued by the Local Government Board, and Introductory Chapters, Notes, and Forms. By T. HALL HALL, Barrister-at-Law. Author of "The Law of Allotments." Royal 12mo. 1888. 7*s.* 6*d.*

ANNUAL DIGEST.—Mews'.—*Vide* "Digest."

ANNUAL LIBRARY (LAWYER'S).—(1) The Annual Practice.—By SNOW, BURNEY, and STRINGER. (2) The Annual Digest.—By MEWS. (3) The Annual Statutes.—By LELY. (4) The Annual County Court Practice.—By His Honour JUDGE HEYWOOD.

The Complete Series, as above, delivered on the day of publication, *net*, 2*l.* Nos. 1, 2, and 3 only, *net*, 1*l.* 10*s.* Nos. 2, 3, and 4 only, *net*, 1*l.* 10*s.* (*Carriage extra*, 2*s.*)

☞ *Subscriptions, payable on or before August* 31*st in each year.*
Full prospectus forwarded on application.

ANNUAL PRACTICE (THE). — The Annual Practice, 1892. Edited by THOMAS SNOW, Barrister-at-Law; CHARLES BURNEY, a Chief Clerk of the Hon. Mr. Justice Chitty, Editor of "Daniell's Chancery Forms"; and F. A. STRINGER, of the Central Office, 2 vols. Demy 8vo. 25*s.*

"A book which every practising English lawyer must have."—*Law Quarterly Review.*
"Every member of the bar, in practice, and every London solicitor, at all events, finds the last edition of the Annual Practice a necessity."—*Solicitors' Journal.*

ANNUAL STATUTES.—Lely.—*Vide* "Statutes."

ARBITRATION.—Russell's Treatise on the Power and Duty of an Arbitrator, and the Law of Submissions and Awards; with an Appendix of Forms, and of the Statutes relating to Arbitration. By FRANCIS RUSSELL, Esq., M.A., Barrister-at-Law. Seventh Edition. By the Author and HERBERT RUSSELL, Esq., Barrister-at-Law. Royal 8vo. 1891. 30*s.*

"Almost a necessity to every practising lawyer."—*Law Quarterly Review.*
"Comprehensive, accurate, and practical."—*Solicitors' Journal.*

ARCHITECTS.—Macassey and Strahan.—*Vide* "Civil Engineers."

ARTICLED CLERKS.—Rubinstein and Ward's Articled Clerks' Handbook.—Being a Concise and Practical Guide to all the Steps Necessary for Entering into Articles of Clerkship, passing the Preliminary, Intermediate, Final, and Honours Examinations, obtaining Admission and Certificate to Practise, with Notes of Cases. Third Edit. By J. S. RUBINSTEIN and S. WARD, Solicitors. 12mo. 1881. 4*s.*

ASSETS, ADMINISTRATION OF.—Eddis' Principles of the Administration of Assets in Payment of Debts.—By ARTHUR SHELLY EDDIS, one of Her Majesty's Counsel. Demy 8vo. 1880. 6*s.*

AVERAGE.—Hopkins' Hand-Book of Average, to which is added a Chapter on Arbitration.—Fourth Edition. By MANLEY HOPKINS, Esq. Demy 8vo. 1884. 1*l.* 1*s.*

Lowndes' Law of General Average.—English and Foreign. Fourth Edition. By RICHARD LOWNDES, Average Adjuster. Author of "The Law of Marine Insurance," &c. Royal 8vo. 1888. 1*l.* 10*s.*

"The book is one which shows a mastery of its subject."—*Solicitors' Journal.*
"It may be confidently asserted that, whether for the purposes of the adjuster or the lawyer, Mr. Lowndes' work presents (in a style which is a model of clear and graceful English) the most complete store of materials relating to the subject in every particular, as well as an excellent exposition of its principles."—*Law Quarterly Review.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

BALLOT.—Fitzgerald's Ballot Act.—With an Introduction. Forming a Guide to the Procedure at Parliamentary and Municipal Elections. Second Edition. By GERALD A. R. FITZGERALD, Esq., Barrister-at-Law Fcap. 8vo. 1876. *5s. 6d.*

BANKING.—Walker's Treatise on Banking Law.—Second Edition. By J. D. WALKER, Esq., Q.C. Demy 8vo. 1885. *15s.*

BANKRUPTCY.—Chitty's Index to all the Reported Cases decided in the several Courts of Equity in England, the Privy Council, and the House of Lords; with a selection of Irish Cases, on or relating to the Principles, Pleading, and Practice of Equity and Bankruptcy. Vol. I. (containing the titles Abandonment to Bankruptcy). Fourth Edition. By W. F. JONES and H. E. HIRST. Royal 8vo. 1883 (published at 1*l.* 11*s.* 6*d.*). *Net, 15s.*

Lawrance's Precedents of Deeds of Arrangement between Debtors and their Creditors; including Forms of Resolutions for Compositions and Schemes of Arrangement under the Bankruptcy Acts, 1883 and 1890, with Introductory Chapters, also the Deeds of Arrangement Acts, 1887 and 1890, with Notes. Fourth Edition. By H. ARTHUR SMITH, Esq., Barrister-at-Law. 8vo. 1892. *7s. 6d.*

"Concise, practical, and reliable."—*Law Times.*

Williams' Law and Practice in Bankruptcy.—Comprising the Bankruptcy Acts, 1883 to 1890, the Bankruptcy Rules, 1886, 1890, the Debtors Acts, 1869, 1878, the Bankruptcy (Discharge and Closure) Act, 1887, and the Deeds of Arrangement Act, 1887. By the Hon. Sir ROLAND VAUGHAN WILLIAMS, one of the Justices of Her Majesty's High Court of Justice. Fifth Edition. By EDWARD WM. HANSELL, Esq., Barrister-at-Law. Roy. 8vo. 1891. *25s.*

"This book will now, if possible, since the appointment of its distinguished author as Bankruptcy Judge, take higher rank as an authority than before."—*Law Journal.*

"Mr. Hansell has done his editorial work with evident care and industry."—*Law Times.*

BILLS OF EXCHANGE.—Chalmers' Digest of the Law of Bills of Exchange, Promissory Notes, Cheques and Negotiable Securities. Fourth Edition. By His Honour Judge CHALMERS, Draughtsman of the Bills of Exchange Act. Demy 8vo. 1891. *18s.*

"As for the main part of the work, the intimate connection of the author with the subject for so many years is a guarantee of its value and completeness."—*Law Journal.*

"This excellent work is unique. As a statement and explanation of the law, it will be found singularly useful."—*Solicitors' Journal.*

BILLS OF SALE.—Fithian's Bills of Sale Acts, 1878 and 1882. With an Introduction and Explanatory Notes, together with an Appendix of Precedents, Rules of Court, Forms, and Statutes. Second Edition. By EDWARD WILLIAM FITHIAN, Esq., Barrister-at-Law. Royal 12mo. 1884. *6s.*

BOOK-KEEPING.—Matthew Hale's System of Book-keeping for Solicitors, containing a List of all Books necessary, with a comprehensive description of their objects and uses for the purpose of Drawing Bills of Costs and the rendering of Cash Accounts to clients; also showing how to ascertain Profits derived from the business; with an Appendix. Demy 8vo. 1884. *5s. 6d.*

"We think this is by far the most sensible, useful, practical little work on solicitors' book-keeping that we have seen."—*Law Students' Journal.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

BUILDING SOCIETIES.—Wurtzburg on Building Societies.—The Acts relating to Building Societies, comprising the Act of 1836 and the Building Societies Acts, 1874, 1875, 1877, and 1884, and the Treasury Regulations, 1884; with an Introduction, copious Notes, and Precedents of Rules and Assurances. By E. A. WURTZBURG, Esq., Barrister-at-Law. Royal 12mo. 1886. 7*s.* 6*d.*

"The work presents in brief, clear, and convenient form the whole law relating to Building Societies."

CANALS.—Webster's Law Relating to Canals: Comprising a Treatise on Navigable Rivers and Canals, together with the Procedure and Practice in Private Bill Legislation; with a coloured Map of the existing Canals and Navigations in England and Wales. By ROBERT G. WEBSTER, M.P., Barrister-at-Law. Demy 8vo. 1885. 1*l.* 1*s.*

Street.—*Vide* "Company Law."

CARRIERS.—Carver's Treatise on the Law relating to the Carriage of Goods by Sea.—Second Edition. By THOMAS GILBERT CARVER, Esq., Barrister-at-Law. Royal 8vo. 1891. 1*l.* 12*s.*

"A recognized authority on the branch of law with which it deals."—*Solicitors' Journal.*

"A careful and accurate treatise."—*Law Quarterly Review.*

Macnamara's Law of Carriers.—A Digest of the Law of Carriers of Goods and Passengers by Land and Internal Navigation, including the Railway and Canal Traffic Act, 1888.—By WALTER HENRY MACNAMARA, of the Inner Temple, Barrister-at-Law, Registrar to the Railway Commission. Royal 8vo. 1888. 1*l.* 8*s.*

"A complete *epitome* of the law relating to carriers of every class."—*Railway Press.*

"We cordially approve of the general plan and execution of this work. . . . . The general arrangement of the book is good."—*Solicitors' Journal.*

"Should find a place in the library of all railway men. The work is written in a terse, clear style, and is well arranged for speedy reference."—*Railway News.*

CHAMBER PRACTICE.—Archibald's Practice at Judges' Chambers and in the District Registries in the Queen's Bench Division, High Court of Justice; with Forms of Summonses and Orders. Second Edition. By W. F. A. ARCHIBALD, Esq., Barrister-at-Law, and P. E. VIZARD, of the Summons and Order Department, Royal Courts of Justice. Royal 12mo. 1886. 15*s.*

CHANCERY, *and Vide* "Equity."

Daniell's Chancery Practice.—The Practice of the Chancery Division of the High Court of Justice and on appeal therefrom. Sixth Edit. By L. FIELD, E. C. DUNN, and T. RIBTON, assisted by W. H. UPJOHN, Barristers-at-Law. 2 vols. in 3 parts. Demy 8vo. 1882-84. 6*l.* 6*s.*

Daniell's Forms and Precedents of Proceedings in the Chancery Division of the High Court of Justice and on Appeal therefrom. Fourth Edition. With Summaries of the Rules of the Supreme Court, Practical Notes and References to the Sixth Edition of "Daniell's Chancery Practice." By CHARLES BURNEY, B.A. Oxon., a Chief Clerk of the Hon. Mr. Justice Chitty. Royal 8vo. 1885. 2*l.* 10*s.*

Morgan's Chancery Acts and Orders.—The Statutes, Rules of Court and General Orders relating to the Practice and Jurisdiction of the Chancery Division of the High Court of Justice and the Court of Appeal. With Copious Notes. Sixth Edition. By the Right Hon. GEORGE OSBORNE MORGAN, one of Her Majesty's Counsel, and E. A. WURTZBURG, Barrister-at-Law. Royal 8vo. 1885. 1*l.* 10*s.*

Peel's Chancery Actions.—A Concise Treatise on the Practice and Procedure in Chancery Actions under the Rules of the Supreme Court, 1883. Third Edition. By SYDNEY PEEL, Esq., Barrister-at-Law. Demy 8vo. 1883. 8*s.* 6*d.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

CHARITABLE TRUSTS.—Mitcheson's Charitable Trusts.—The Jurisdiction of the Charity Commission; being the Acts conferring such jurisdiction, 1853—1883, with Introductory Essays and Notes on the Sections. By RICHARD EDMUND MITCHESON, Esq., Barrister-at-Law. Demy 8vo. 1887. 18*s.*

"A very neat and serviceable hand-book of the Law."—*Law Journal.*

CHARTER PARTIES.—Carver.—*Vide* "Carriers." Wood.—*Vide* "Mercantile Law."

CIVIL ENGINEERS.—Macassey and Strahan's Law relating to Civil Engineers, Architects and Contractors.—Primarily intended for their own use. By L. LIVINGSTON MACASSEY and J. A. STRAHAN, Esqrs., Barristers-at-Law. Demy 8vo. 1890. 10*s.* 6*d.*

COAL MINES.—Chisholm's Manual of the Coal Mines Regulation ACT, 1887.—With Introduction, Explanatory and Practical Notes and References to Decisions in England and Scotland, Appendix of Authorized Forms, Particulars as to Examinations for Certificates, &c., and a copious Index. By JOHN C. CHISHOLM, Secretary to the Midland and East Lothian Coalmasters' Association. Demy 8vo. 1888. 7*s.* 6*d.*

COLLISIONS.—Marsden's Treatise on the Law of Collisions at Sea.—With an Appendix containing Extracts from the Merchant Shipping Acts, the International Regulations for preventing Collisions at Sea; and local Rules for the same purpose in force in the Thames, the Mersey, and elsewhere. By REGINALD G. MARSDEN, Esq., Barrister-at-Law. Third Edition. By the Author and the Hon. J. W. MANSFIELD, Barrister-at-Law. Demy 8vo. 1891. 1*l.* 5*s.*

"Mr. Marsden's work has by this time taken its place as one of the standard books on its subject. It is clear in statement and careful in summarizing the results of decisions."—*Solicitors' Journal*, May 16, 1891.

COMMERCIAL LAW.—The French Code of Commerce and most usual Commercial Laws.—With a Theoretical and Practical Commentary, and a Compendium of the Judicial Organization and of the Course of Procedure before the Tribunals of Commerce; together with the text of the law; the most recent decisions, and a glossary of French judicial terms. By L. GOIRAND, Licencié en droit. Demy 8vo. 1880. 2*l.* 2*s.*

COMMON LAW.—Ball's Short Digest of the Common Law; being the Principles of Torts and Contracts. Chiefly founded upon the Works of Addison, with Illustrative Cases, for the use of Students. By W. EDMUND BALL, LL.B., Barrister-at-Law. Demy 8vo. 1880. 16*s.*

Chitty's Archbold's Practice of the Queen's Bench Division of the High Court of Justice and on Appeal therefrom to the Court of Appeal and House of Lords in Civil Proceedings. Fourteenth Edition. By THOMAS WILLES CHITTY, assisted by J. ST. L. LESLIE, Barristers-at-Law. 2 vols. Demy 8vo. 1885. 3*l.* 13*s.* 6*d.*

Chitty's Forms.—*Vide* "Forms."

Fisher's Digest of Reported Decisions in all the Courts, with a Selection from the Irish; and references to the Statutes, Rules and Orders of Courts from 1756 to 1883. Compiled and arranged by JOHN MEWS, assisted by C. M. CHAPMAN, HARRY H. W. SPARHAM and A. H. TODD, Barristers-at-Law. In 7 vols. Royal 8vo. 1884. (Published at 12*l.* 12*s.*) Reduced to *net* 5*l.* 5*s.*

Mews' Consolidated Digest of all the Reports in all the Courts, for the years 1884–88, inclusive. By JOHN MEWS, Barrister-at-Law. Royal 8vo. 1889. (Pub. at 1*l.* 11*s.* 6*d.*) Reduced to *net* 15*s.*

The Annual Digest for 1889, 1890, and 1891. By JOHN MEWS, Barrister-at-Law. Royal 8vo. *Each*, 15*s.*

☞ The above bring Fisher's Common Law and Chitty's Equity Digests down to end of 1891.

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

COMMON LAW—*continued.*

Napier's Concise Practice of the Queen's Bench and Chancery Divisions and of the Court of Appeal, with an Appendix of Questions on the Practice, and intended for the use of Students. By T. Bateman Napier, Esq., Barrister-at-Law. Demy 8vo. 1884. 10*s.*

Shirley.—*Vide* "Leading Cases."

Smith's Manual of Common Law.—For Practitioners and Students. Comprising the Fundamental Principles, with useful Practical Rules and Decisions. By Josiah W. Smith, B.C.L., Q.C. Tenth Edition. By J. Trustram, LL.M., Esq., Barrister-at-Law. 12mo. 1887. 14*s.*

COMMONS AND INCLOSURES.—Chambers' Digest of the Law relating to Commons and Open Spaces, including Public Parks and Recreation Grounds. By George F. Chambers, Esq., Barrister-at-Law. Imperial 8vo. 1877. 6*s.* 6*d.*

COMPANY LAW.—Hamilton's Manual of Company Law: For Directors and Promoters. Being a Treatise upon the nature of Trading Corporations, the Rights, Duties, and Liabilities of Directors and Promoters (including their Liabilities under the Directors Liability Act, 1890), the Appointment and Removal of Directors, the Powers of Directors, and the Law of Ultra Vires. By William Frederick Hamilton, LL.D. (Lond.), assisted by Kennard Golborne Metcalfe, M.A., Esqrs., Barristers-at-Law. Demy 8vo. 1891. 12*s.* 6*d.*

"The work is executed throughout with great care and accuracy . . . . may be safely recommended as a most useful manual of the law with which it deals."—*Law Gazette.*

Palmer's Private Companies and Syndicates, their Formation and Advantages; being a Concise Popular Statement of the Mode of Converting a Business into a Private Company, and of establishing and working Private Companies and Syndicates for Miscellaneous Purposes. Ninth Edition. By F. B. Palmer, Esq., Barrister-at-Law. 12mo. 1891. *Net* 1*s.*

Palmer.—*Vide* "Conveyancing" and "Winding-up."

Palmer's Shareholders' and Directors' Legal Companion.—A Manual of Every-day Law and Practice for Promoters, Shareholders, Directors, Secretaries, Creditors and Solicitors of Companies under the Companies Acts, 1862 to 1890, with Appendix of useful Forms. Twelfth edition. By F. B. Palmer, Esq., Barrister-at-Law. 12mo. 1892. *Net*, 2*s.* 6*d.*

Street's Law relating to Public Statutory Undertakings: comprising Railway Companies, Water, Gas, and Canal Companies, Harbours, Docks, &c., with special reference to Modern Decisions. By J. Bamfield Street, Esq., Barrister-at Law. Demy 8vo. 1890. 10*s.* 6*d.*

"This book contains in a small compass a large amount of useful information: its style is clear and its arrangement good."—*Solicitors' Journal.*

Thring.—*Vide* "Joint Stocks."

COMPENSATION.—Cripps' Treatise on the Principles of the Law of Compensation. Second Edition. By C. A. Cripps, Esq., Q.C. Demy 8vo. 1884. 16*s.*

COMPOSITION DEEDS.—Lawrance.—*Vide* "Bankruptcy."

CONTRACTS.—Addison on Contracts. Being a Treatise on the Law of Contracts. 9th Edit. By Horace Smith, Esq., Bencher of the Inner Temple, Metropolitan Magistrate, assisted by A. P. Perceval Keep, Esq., Barrister-at-Law. Royal 8vo. 1892. 2*l.* 10*s.*

"A satisfactory guide to the vast storehouse of decisions on contract law." *Sol. Jour.*

"A compendium of the law of contracts which is at once minutely accurate, thoroughly reliable, and exhaustive. . . . No law library is complete without Addison up to date."—*Freeman's Journal*, Jan. 2, 1892.

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

CONTRACTS—*continued.*

Fry.—*Vide* "Specific Performance."

Leake's Law of Contracts.—Third Edition. By STEPHEN MARTIN LEAKE, Barrister-at-Law. (*In the press.*)

Pollock's Principles of Contract.—Being a Treatise on the General Principles relatng to the Validity of Agreements in the Law of England. Fifth Edition, with a new Chapter. By Sir FREDERICK POLLOCK, Bart., Barrister-at-Law, Professor of Common Law in the Inns of Court, &c. Demy 8vo. 1889. 1*l.* 8*s.*

"The reputation of the book stands so high that it is only necessary to announce the publication of the fifth edition, adding that the work has been thoroughly revised."—*Law Journal.*

Smith's Law of Contracts.—Eighth Edition. By V. T. THOMPSON, Esq., Barrister-at-Law. Demy 8vo. 1885. 1*l.* 1*s.*

CONVEYANCING.—Dart.—*Vide* "Vendors and Purchasers."

Greenwood's Manual of Conveyancing.—A Manual of the Practice of Conveyancing, showing the present Practice relating to the daily routine of Conveyancing in Solicitors' Offices. To which are added Concise Common Forms and Precedents in Conveyancing. Eighth Edition. Edited by HARRY GREENWOOD, M.A., LL.D., Esq., Barrister-at-Law. Demy 8vo. 1891. 16*s.*

"That this work has reached its eighth edition is sufficient evidence of the fact that it is one of those books which no lawyer's bookshelf should be without. Recent Acts have necessitated several changes which have been carried out, and cases are cited up to date. The book is a complete guide to Conveyancing, and, though the author says that it is intended for students and articled and other clerks, we can fearlessly assert that those who would perhaps consider it an insult to be mistaken for students will find in it very much that is useful. The Table of Precedents could not, we imagine, be made more complete than it is. Where and how the author obtained his information is a perfect puzzle to us, and no conceivable state of affairs seems to have been left unprovided for."—*Law Gazette.*

"We should like to see it placed by his principal in the hands of every articled clerk. One of the most useful practical works we have ever seen."—*Law Students' Journal.*

Morris's Patents Conveyancing.—Being a Collection of Precedents in Conveyancing in relation to Letters Patent for Inventions. Arranged as follows:—Common Forms, Agreements, Assignments, Mortgages, Special Clauses, Licences, Miscellaneous; Statutes, Rules, &c. With Dissertations and Copious Notes on the Law and Practice. By ROBERT MORRIS, M.A., Barrister-at-Law. Royal 8vo. 1887. 1*l.* 5*s.*

"Contains valuable dissertations, and useful notes on the subject with which it deals. . . . . We think it would be difficult to suggest a form which is not to be met with or capable of being prepared from the book before us. To those whose business lies in the direction of letters patent and inventions it will be found of great service. . . . Mr. Morris' forms seem to us to be well selected, well arranged, and thoroughly practical."—*Law Times.*

Palmer's Company Precedents.—For use in relation to Companies subject to the Companies Acts, 1862 to 1890. Arranged as follows:—Promoters, Prospectus, Agreements, Memoranda and Articles of Association, Resolutions, Notices, Certificates, Private Companies, Power of Attorney, Debentures and Debenture Stock, Petitions, Writs, Pleadings, Judgments and Orders, Reconstruction, Amalgamation, Arrangements, Special Acts, Provisional Orders, Winding-up. With Copious Notes and an Appendix containing the Acts and Rules. Fifth Edition. By FRANCIS BEAUFORT PALMER, assisted by CHARLES MACNAGHTEN, Esqrs., Barristers-at-Law. Royal 8vo. 1891. 1*l.* 16*s.*

"No company lawyer can afford to be without it."—*Law Journal*, April 25, 1891.

"As regards company drafting—as we remarked on a former occasion—it is unrivalled."—*Law Times.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

CONVEYANCING—*continued.*

Prideaux's Precedents in Conveyancing—With Dissertations on its Law and Practice. Fourteenth Edition. By FREDERICK PRIDEAUX, late Professor of the Law of Real and Personal Property to the Inns of Court, and JOHN WHITCOMBE, Esqrs., Barristers-at-Law. 2 vols. Royal 8vo. 1889. 3*l.* 10*s.*

"The most useful work out on Conveyancing."—*Law Journal.*

"This work is accurate, concise, clear, and comprehensive in scope, and we know of no treatise upon conveyancing which is so generally useful to the practitioner."—*Law Times.*

Turner's Duties of Solicitor to Client as to Partnership Agreements, Leases, Settlements, and Wills.—By EDWARD F. TURNER, Solicitor, Lecturer on Real Property and Conveyancing, Author of "The Duties of Solicitor to Client as to Sales, Purchases, and Mortgages of Land." (Published by permission of the Council of the Incorporated Law Society.) Demy 8vo. 1884. 10*s.* 6*d.*

"The work has our full approval, and will, we think, be found a valuable addition to the student's library."—*Law Students' Journal.*

CONVICTIONS.—Paley's Law and Practice of Summary Convictions under the Summary Jurisdiction Acts; including Proceedings preliminary and subsequent to Convictions, and the responsibility of convicting Magistrates and their Officers, with Forms. Seventh Edition. By W. H. MACNAMARA, Esq., Barrister-at-Law. (*In preparation.*)

COPYRIGHT.—Slater's Law relating to Copyright and Trade Marks, treated more particularly with Reference to Infringement; forming a Digest of the more important English and American decisions, together with the Practice of the English Courts, &c. By JOHN HERBERT SLATER, Esq., Barrister-at-Law. 8vo. 1884. 18*s.*

CORONERS.—Jervis on the Office and Duties of Coroners.—The Coroners Act, 1887. With Forms and Precedents. By R. E. MELSHEIMER, Esq., Barrister-at-Law. Being the Fifth Edition of "Jervis on Coroners." Post 8vo. 1888. 10*s.* 6*d.*

'The present edition will hold the place of that occupied by its predecessors, and will continue to be the standard work on the subject."—*Law Times.*

COSTS.—Morgan and Wurtzburg's Treatise on the Law of Costs in the Chancery Division.—Second Edition. With Forms and Precedents. By the Rt. Hon. GEORGE OSBORNE MORGAN, Q.C., and E. A. WURTZBURG, Esq., Barrister-at-Law. Demy 8vo. 1882. 1*l.* 10*s.*

Summerhays and Toogood's Precedents of Bills of Costs in the Chancery, Queen's Bench, Probate, Divorce and Admiralty Divisions of the High Court of Justice; in Conveyancing; the Crown Office; Bankruptcy; Lunacy; Arbitration under the Lands Clauses Consolidation Act; the Mayor's Court, London; the County Courts; the Privy Council; and on Passing Residuary and Succession Accounts; with Scales of Allowances and Court Fees; Rules of Court relating to Costs; Forms of Affidavits of Increase, and of Objections to Taxation. By WM. FRANK SUMMERHAYS, and THORNTON TOOGOOD, Solicitors. Sixth Edition. By THORNTON TOOGOOD, Solicitor. Royal 8vo. 1889. 1*l.* 8*s.*

Summerhays and Toogood's Precedents of Bills of Costs in the County Courts. Royal 8vo. 1889. 5*s.*

Scott's Costs in the High Court of Justice and other Courts. Fourth Edition. By JOHN SCOTT, of the Inner Temple, Esq., Barrister-at-Law. Demy 8vo. 1880. 1*l.* 6*s.*

Webster's Parliamentary Costs.—Private Bills, Election Petitions, Appeals, House of Lords. Fourth Edition. By C. CAVANAGH, Esq., Barrister-at-Law. Post 8vo. 1881. 20*s.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

COUNTY COUNCILS.—Bazalgette and Humphreys, Chambers. —*Vide* "Local and Municipal Government."

COUNTY COURTS.—The Annual County Court Practice, 1892.—By His Honour Judge Washington Heywood. 2 vols. Demy 8vo. (*Nearly ready*) 25*s.*

Pitt-Lewis' County Court Practice.—A Complete Practice of the County Courts, including that in Admiralty and Bankruptcy, embodying the County Courts Act, 1888, and other existing Acts, Rules, Forms and Costs, with Full Alphabetical Index to Official Forms, Additional Forms and General Index. Fourth Edition. With Supplementary Volume containing the New Winding-up Practice. By G. Pitt-Lewis, Esq., Q.C., M.P., Recorder of Poole. 3 vols. Demy 8vo. 1890-91. 2*l.* 10*s.*

*** *The Supplement sold separately.* 7*s.* 6*d.*

"A complete practice of the County Courts."—*Law Journal.*

"The present edition of this work fully maintains its reputation as the standard County Court Practice."—*Solicitors' Journal.*

Pitt-Lewis' County Courts Act, 1888.—With Introduction, Tabular Indices to consolidated Legislation, Notes, and an Index to the Act. Second Edition. By George Pitt-Lewis, Esq., Q.C., Author of "A Complete Practice of the County Courts." Imperial 8vo. 1889. 5*s.*

*** The above, with The County Court Rules, 1889. Official copy. *Limp binding.* 10*s.* 6*d.*

Summerhays and Toogood.—*Vide* "Costs."

COVENANTS.—Hamilton's Law of Covenants.—A Concise Treatise on the Law of Covenants. By G. Baldwin Hamilton, of the Inner Temple, Esq., Barrister-at-Law. Demy 8vo. 1888. 7*s.* 6*d.*

"A handy volume written with clearness, intelligence, and accuracy, and will be useful to the profession."—*Law Times.*

CRIMINAL LAW.—Archbold's Pleading and Evidence in Criminal Cases.—With the Statutes, Precedents of Indictments, &c., and the Evidence necessary to support them. Twentieth Edition. By William Bruce, Esq., Stipendiary Magistrate for the Borough of Leeds. Royal 12mo. 1886. 1*l.* 11*s.* 6*d.*

Mews' Digest of Cases relating to Criminal Law from 1756 to 1883, inclusive.—By John Mews, assisted by C. M. Chapman, Harry H. W. Sparham, and A. H. Todd, Barristers-at-Law. Royal 8vo. 1884. 1*l.* 1*s.*

Phillips' Comparative Criminal Jurisprudence.—Vol. I. Penal Law. Vol. II. Criminal Procedure. By H. A. D. Phillips, Bengal Civil Service. 2 vols. Demy 8vo. 1889. 1*l.* 4*s.*

Roscoe's Digest of the Law of Evidence in Criminal Cases.—Eleventh Edition. By Horace Smith and Gilbert George Kennedy, Esqrs., Metropolitan Magistrates. Demy 8vo. 1890. 1*l.* 11*s.* 6*d.*

"To the criminal lawyer it is his guide, philosopher and friend. What Roscoe says most judges will accept without question. . . . Every addition has been made necessary to make the digest efficient, accurate, and complete."—*Law Times.*

Russell's Treatise on Crimes and Misdemeanors.—Fifth Edition. By Samuel Prentice, Esq., one of Her Majesty's Counsel, 3 vols. Royal 8vo. 1877. 5*l.* 15*s.* 6*d.*

Shirley's Sketch of the Criminal Law.—By W. S. Shirley, Esq., Barrister-at-Law. Second Edition. By Charles Stephen Hunter, Esq., Barrister-at-Law. Demy 8vo. 1889. 7*s.* 6*d.*

As a primary introduction to Criminal Law, it will be found very acceptable to students."—*Law Students' Journal.*

Warburton.—*Vide* "Leading Cases." Thring.—*Vide* "Navy."

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

DECISIONS OF SIR GEORGE JESSEL.—Peter's Analysis and Digest of the Decisions of Sir George Jessel; with Notes, &c. By APSLEY PETRE PETER, Solicitor. Demy 8vo. 1883. 16*s.*

DIARY.—Lawyer's Companion (The), Diary, and Law Directory for 1892.—For the use of the Legal Profession, Public Companies, Justices, Merchants, Estate Agents, Auctioneers, &c., &c. Edited by EDWIN LAYMAN, B.A., of the Middle Temple, Esq., Barrister-at-Law; and contains Tables of Costs in the High Court of Judicature and County Court, &c.; Monthly Diary of County, Local Government, and Parish Business; Oaths in Supreme Court; List of Statutes of 1891; Alphabetical Index to the Practical Statutes since 1820; the New Schedule of Stamp Duties; Legal Time, Interest, Discount, Income, Wages and other Tables; Probate, Legacy and Succession Duties; and a variety of matters of practical utility: together with a complete List of the English Bar, and London and Country Solicitors, with date of admission and appointments. PUBLISHED ANNUALLY. Forty-sixth Issue. 1892. (*Now ready.*)

Issued in the following forms, octavo size, strongly bound in cloth:—

1.	Two days on a page, plain	5*s.* 0*d.*
2.	The above, INTERLEAVED for ATTENDANCES	7 0
3.	Two days on a page, ruled, with or without money columns	5 6
4.	The above, with money columns, INTERLEAVED for ATTENDANCES	8 0
5.	Whole page for each day, plain	7 6
6.	The above, INTERLEAVED for ATTENDANCES	9 6
7.	Whole page for each day, ruled, with or without money columns	8 6
8.	The above, INTERLEAVED for ATTENDANCES	10 6
9.	Three days on a page, ruled blue lines, without money columns	5 0

The Diary contains memoranda of Legal Business throughout the Year.

"Contains all the information which could be looked for in such a work, and gives it in a most convenient form and very completely."—*Solicitors' Journal.*

"The 'Lawyer's Companion and Diary' is a book that ought to be in the possession of every lawyer, and of every man of business."

"The 'Lawyer's Companion' is, indeed, what it is called, for it combines everything required for reference in the lawyer's office."—*Law Times.*

"The practitioner will find in these pages, not only all that he might reasonably expect to find, but a great deal more."—*Law Journal.*

"It should be in the hands of all members of both branches of the profession."—*Law Gazette.*

"The thousand and one things that one needs constantly to know and yet can never remember, will be found handily arranged for immediate reference."—*Pump Court.*

"This legal Whitaker is a noble work, and no lawyer has any right to want to know anything—except law, which it would not tell him."—*Saturday Review.*

DICTIONARY.—The Pocket Law Lexicon.—Explaining Technical Words, Phrases and Maxims of the English, Scotch and Roman Law, to which is added a complete List of Law Reports, with their Abbreviations. Second Edition, Enlarged. By HENRY G. RAWSON, Esq., Barrister-at-Law. Fcap. 8vo. 1884. 6*s.* 6*d.*

"A wonderful little legal Dictionary."—*Indermaur's Law Students' Journal.*

"A very handy, complete, and useful little work."—*Saturday Review.*

Wharton's Law Lexicon.—Forming an Epitome of the Law of England, and containing full Explanations of the Technical Terms and Phrases thereof, both Ancient and Modern; including the various Legal Terms used in Commercial Business. Together with a Translation of the Latin Law Maxims and selected Titles from the Civil, Scotch and Indian Law. Ninth Edition. By J. M. LELY, Esq., Barrister-at-Law. Super-royal 8vo. 1892. 1*l.* 18*s.*

"On almost every point both student and practitioner can gather information from this invaluable book, which ought to be in every lawyer's office."—*Gibson's Law Notes.*

"One of the first books which every articled clerk and bar student should procure."—*Law Students' Journal.*

"As it now stands the Lexicon contains all it need contain, and to those who value such a work it is made more valuable still."—*Law Times.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

DIGESTS.—Chitty's Index to all the Reported Cases decided in the several Courts of Equity in England, the Privy Council, and the House of Lords, with a selection of Irish Cases, on or relating to the Principles, Pleading, and Practice of Equity and Bankruptcy from the earliest period. Fourth Edition. Wholly Revised, Re-classified, and brought down to the End of 1883. By HENRY EDWARD HIRST, Barrister-at-Law. Complete in 9 vols. Roy. 8vo. 1883-89. (Published at 12*l.* 12*s.*) *Reduced to net*, 5*l.* 5*s.*

*** The volumes sold separately. *Each net*, 15*s.*

"A work indispensable to every bookcase in Lincoln's Inn."—*Law Quarterly Review.*

"The practitioner can hardly afford to do without such a weapon as Mr. Hirst supplies, because if he does not use it probably his opponent will."—*Law Journal.*

Dale and Lehmann's Digest of Cases, Overruled, Not Followed, Disapproved, Approved, Distinguished, Commented on and specially considered in the English Courts from the Year 1756 to 1886 inclusive, arranged according to alphabetical order of their subjects; together with Extracts from the Judgments delivered thereon, and a complete Index of the Cases, in which are included all Cases reversed from the year 1856. By CHAS. WM. MITCALFE DALE, and RUDOLF CHAMBERS LEHMANN, assisted by CHAS. H. L. NEISH, and HERBERT H. CHILD, Barristers-at-Law. Royal 8vo. 1887. (Published at 2*l.* 10*s.*) *Reduced to net*, 25*s.*

"One of the best works of reference to be found in any library."—*Law Times.*

"The book is divided into two parts, the first consisting of an alphabetical index of the cases contained in the Digest presented in a tabular form, showing at a glance how, where, and by what judges they have been considered. The second portion of the book comprises the Digest itself, and bears marks of the great labour and research bestowed upon it by the compilers."—*Law Journal.*

Fisher's Digest of the Reported Decisions of the Courts of Common Law, Bankruptcy, Probate, Admiralty, and Divorce, together with a Selection from those of the Court of Chancery and Irish Courts from 1756 to 1883 inclusive. Founded on Fisher's Digest. By J. MEWS, assisted by C. M. CHAPMAN, H. H. W. SPARHAM, and A. H. TODD, Barristers-at-Law. 7 vols. Roy. 8vo. 1884. (Published at 12*l.* 12*s.*) *Reduced to net*, 5*l.* 5*s.*

"To the common lawyer it is the most useful work he can possess."—*Law Times.*

Mews' Consolidated Digest of all the Reports in all the Courts, for the Years 1884-88 inclusive.—By JOHN MEWS, Barrister-at-Law. Royal 8vo. 1889. (Published at 1*l.* 11*s.* 6*d.*) *Reduced to net*, 15*s.*

"This work is an indispensable companion to the new edition of Chitty's Digest, which ends with 1883, and also Fisher's Digest ending with the same year. . . . . The work appears to us to be exceedingly well done."—*Solicitors' Journal.*

Or the whole of these Digests, together 18 Volumes, net £10.

The Annual Digest for 1889, 1890, and 1891. By JOHN MEWS, Barrister-at-Law. Royal 8vo. *Each*, 15*s.*

*** The above bring Fisher's Common Law and Chitty's Equity Digests down to end of 1891.

Talbot and Fort's Index of Cases Judicially noticed (1865—1890); being a List of all Cases cited in Judgments reported in the "Law Reports," "Law Journal," "Law Times," and "Weekly Reporter," from Michaelmas Term, 1865 to the end of 1890, with the places where they are so cited.—By GEORGE JOHN TALBOT and HUGH FORT, Barristers-at-Law. Royal 8vo. 1891. 25*s.*

"This is an invaluable tool for the worker among cases. . . . The way in which the tool is to be used is this, you find a case that appears to decide the question you have in hand, but you want to know whether it has been subsequently judicially questioned or confirmed. You turn to the name of the case, given in large type in this work, and you find following it in smaller type the names, references to reports, and dates of every reported case since 1865 in the judgments of which it has been in any way noticed."—*Solicitors' Journal*, September 26, 1891.

"Talbot and Fort is forthwith established in our revolving bookcase side by side with 'Dale and Lehmann.'"—*Law Quarterly Review*, July, 1891.

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

DISCOVERY.—Hare's Treatise on the Discovery of Evidence.—Second Edition. By SHERLOCK HARE, Barrister-at-Law. Post 8vo. 1877. 12*s.*

Sichel and Chance's Discovery.—The Law relating to Interrogatories, Production, Inspection of Documents, and Discovery, as well in the Superior as in the Inferior Courts, together with an Appendix of the Acts, Forms and Orders. By WALTER S. SICHEL, and WILLIAM CHANCE, Esqrs., Barristers-at-Law. Demy 8vo. 1883. 12*s.*

DISTRESS.—Oldham and Foster on the Law of Distress.—A Treatise on the Law of Distress, with an Appendix of Forms, Table of Statutes, &c. Second Edition. By ARTHUR OLDHAM and A. LA TROBE FOSTER, Esqrs., Barristers-at-Law. Demy 8vo. 1889. 18*s.*

"This is a useful book, because it embraces the whole range of the remedy by distress, not merely distress for rent, but also for *damage feasant*, tithes, poor and highway rates and taxes, and many other matters."—*Solicitors' Journal.*

DISTRICT REGISTRIES.—Archibald.—*Vide* "Chamber Practice."

DIVORCE.—Browne and Powles' Law and Practice in Divorce and Matrimonial Causes. Fifth Edition. By L. D. POWLES, Esq., Barrister-at-Law. Demy 8vo. 1889. 1*l.* 6*s.*

"The practitioner's standard work on divorce practice."—*Law Quarterly Review.*

"Mr. Powles' edition cites all the necessary information for bringing the book down to date, supplies an excellent index, on which he has spent much pains, and maintains the position which Browne's Divorce Treatise has held for many years."—*Law Journal.*

Winter's Manual of the Law and Practice of Divorce.—By DUNCAN CLERK WINTER, Solicitor. (Reprinted from "The Jurist.") Crown 8vo. 1889. *Net*, 2*s.* 6*d.*

DOGS.—Lupton's Law relating to Dogs.—By FREDERICK LUPTON, Solicitor. Royal 12mo. 1888. 5*s.*

"Within the pages of this work the reader will find every subject connected with the law relating to dogs touched upon, and the information given appears to be both exhaustive and correct."—*Law Times.*

DOMICIL.—Dicey's Le Statut Personnel anglais ou la Loi du Domicile.—Ouvrage traduit et complété d'après les derniers arrêts des Cours de Justice de Londres, et par la comparaison avec le Code Napoléon et les Diverses Législations du Continent. Par EMILE STOCQUART, Avocat à la Cour d'Appel de Bruxelles. 2 Tomes. Demy 8vo. 1887-88. 1*l.* 4*s.*

EASEMENTS.—Goddard's Treatise on the Law of Easements.—By JOHN LEYBOURN GODDARD, Esq., Barrister-at-Law. Fourth Edition. Demy 8vo. 1891. 1*l.* 1*s.*

"An indispensable part of the lawyer's library."—*Solicitors' Journal.*

"The book is invaluable: where the cases are silent the author has taken pains to ascertain what the law would be if brought into question."—*Law Journal.*

"Nowhere has the subject been treated so exhaustively, and, we may add, so scientifically, as by Mr. Goddard. We recommend it to the most careful study of the law student, as well as to the library of the practitioner."—*Law Times.*

Innes' Digest of the English Law of Easements. Third Edition. By Mr. JUSTICE INNES, lately one of the Judges of Her Majesty's High Court of Judicature, Madras. Royal 12mo. 1884. 6*s.*

ECCLESIASTICAL LAW.—Phillimore's Ecclesiastical Law of the Church of England. With Supplement. By the Right. Hon. Sir ROBERT PHILLIMORE, D.C.L. 2 vols. 8vo. 1873-76. (Published at 3*l.* 7*s.* 6*d.*) *Reduced to net*, 1*l.* 10*s.*

ELECTION IN EQUITY.—Serrell's Equitable Doctrine of Election. By GEORGE SERRELL, M.A., LL.D., Esq., Barrister-at-Law. Royal 12mo. 1891. 7*s.* 6*d.*

"The work is well executed, and will be of service to all who desire to master the doctrine of election."—*Law Journal.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

ELECTIONS.—Hedderwick's Parliamentary Election Manual: A Practical Handbook on the Law and Conduct of Parliamentary Elections in Great Britain and Ireland, designed for the Instruction and Guidance of Candidates, Election Agents, Sub-Agents, Polling and Counting Agents, Canvassers, Volunteer Assistants, and Members of Political Clubs and Associations. By T. C. H. HEDDERWICK, Esq., Barrister-at-Law. Demy 12mo. 1892. 7*s.* 6*d.*

"Exactly the kind of work that should be in the hands of every election agent during an election. It is a book intended for the guidance of election agents and candidates, and is concisely and clearly written. The chronological order of an election is followed, and the forms are inserted in their appropriate places. . . . . At the beginning of the book there is a useful time-table, giving the date, either before or after the nomination day and the polling day, on which each requisite step must be taken, with a reference to the section of the Act which requires it."—*Solicitors' Journal*, January 16, 1892.

"We should recommend everybody interested in keeping on the right side of the law at the General Election to get Mr. Hedderwick's Manual."—*Law Times.*

"The book may be recommended as concise, well arranged, practical, and likely to be of service to any one who consults it."—*The Scotsman.*

Rogers on Elections.—In two parts.

Part I. REGISTRATION, including the Practice in Registration Appeals; Parliamentary, Municipal, and Local Government; with Appendices of Statutes, Orders in Council, and Forms. Fifteenth Edition. By MAURICE POWELL, of the Inner Temple, Esq., Barrister-at-Law. Royal 12mo. 1890. 1*l.* 1*s.*

"The practitioner will find within these covers everything which he can be expected to know, well arranged and carefully stated."—*Law Times.*

Part II. ELECTIONS AND PETITIONS. Parliamentary, Municipal, and Local Government, with Appendix of Statutes and Forms. Sixteenth Edition. By SAMUEL H. DAY, of the Middle Temple, Esq., Barrister-at-Law. Royal 12mo. 1892. (*Nearly ready.*) 1*l.* 1*s.*

"A very satisfactory treatise on election law . . . . well arranged, and tersely expressed. The completeness and general character of the book as regards the old law are too well known to need description."—*Solicitors' Journal.*

ELECTRIC LIGHTING.—Bazalgette and Humphreys.—*Vide* "Local and Municipal Government."

Cunynghame's Treatise on the Law of Electric Lighting, with the Acts, Rules and Orders, a Model Provisional Order, and Forms. By HENRY CUNYNGHAME, Barrister-at-Law. Royal 8vo. 1883. 12*s.* 6*d.*

EQUITY, *and Vide* CHANCERY.

Chitty's Index.—*Vide* "Digests."

Mews' Digest.—*Vide* "Digests."

Serrell.—*Vide* "Election in Equity."

Seton's Forms of Judgments and Orders in the High Court of Justice and in the Court of Appeal, having especial reference to the Chancery Division, with Practical Notes. Fifth Edition. By CECIL C. M. DALE, Esq., of Lincoln's Inn, Barrister-at-Law, and W. CLOWES, Esq., a Registrar of the Supreme Court of Judicature. In 2 vols. Royal 8vo. Vol. I. 1891. 2*l.*

"We have no fault to find with the treatment of either editor. Seton in its new guise is well up to the character which it has for so many years sustained of being the best book of forms of judgment which is known on the north side of the Strand."—*Law Times.*

Smith's Manual of Equity Jurisprudence.—A Manual of Equity Jurisprudence for Practitioners and Students, founded on the Works of Story, Spence, and other writers, comprising the Fundamental Principles and the points of Equity usually occurring in General Practice. By JOSIAH W. SMITH, Q.C. Fourteenth Edition. By J. TRUSTRAM, LL.M., Esq., Barrister-at-Law. 12mo. 1889. 12*s.* 6*d.*

"Still holds its own as the most popular first book of equity jurisprudence, and one which every student must of necessity read."—*Law Journal.*

"It will be found as useful to the practitioner as to the student."—*Solicitors' Journal.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

EQUITY—*continued.*

Smith's Practical Exposition of the Principles of Equity, illustrated by the Leading Decisions thereon. For the use of Students and Practitioners. Second Edition. By H. ARTHUR SMITH, M.A., LL.B., Esq., Barrister-at-Law. Demy 8vo. 1888. 21*s.*

"This excellent practical exposition of the principles of equity is a work one can well recommend to students either for the bar or the examinations of the Incorporated Law Society. It will also be found equally valuable to the busy practitioner. It contains a mass of information well arranged, and is illustrated by all the leading decisions. All the legislative changes that have occurred since the publication of the first edition have been duly incorporated in the present issue."—*Law Times.*

ESTOPPEL.—Everest and Strode's Law of Estoppel. By LANCELOT FIELDING EVEREST, and EDMUND STRODE, Esqrs., Barristers-at-Law. Demy 8vo. 1884. 18*s.*

"A useful repository of the case law on the subject."—*Law Journal.*

EXAMINATION GUIDES.—Bedford's Digest of the Preliminary Examination Questions in Latin Grammar, Arithmetic, French Grammar, History and Geography, with the Answers. Second Edition. Demy 8vo. 1882. 18*s.*

Bedford's Student's Guide to the Ninth Edition of Stephen's New Commentaries on the Laws of England.—Third Edition. Demy 8vo. 1884. 7*s.* 6*d.*

Haynes and Nelham's Honours Examination Digest, comprising all the Questions in Conveyancing, Equity, Common Law, Bankruptcy, Probate, Divorce, Admiralty, and Ecclesiastical Law and Practice asked at the Solicitors' Honours Examinations, with Answers thereto. By JOHN F. HAYNES, LL.D., and THOMAS A. NELHAM, Solicitor (Honours). Demy 8vo. 1883. 15*s.*

"Students going in for honours will find this one to their advantage."—*Law Times.*

Napier's Modern Digest of the Final Examinations; a Modern Digest of the Law necessary to be known for the Final Examination of the Incorporated Law Society, done into Questions and Answers; and a Guide to a Course of Study for that Examination. By T. BATEMAN NAPIER, LL.D., London, of the Inner Temple, Barrister-at-Law. Demy 8vo. 1887. 18*s.*

"As far as we have tested them we have found the questions very well framed, and the answers to them clear, concise and accurate. If used in the manner that Dr. Napier recommends that it should be used, that is, together with the text-books, there can be little doubt that it will prove of considerable value to students."—*The Jurist.*

Napier & Stephenson's Digest of the Subjects of Probate, Divorce, Bankruptcy, Admiralty, Ecclesiastical and Criminal Law necessary to be known for the Final Examination, done into Questions and Answers. With a Preliminary Chapter on a Course of Study for the above Subjects. By T. BATEMAN NAPIER and RICHARD M. STEPHENSON, Esqrs., Barristers-at-Law. Demy 8vo. 1888. 12*s.*

"It is concise and clear in its answers, and the questions are based on points, for the most part, material to be known."—*Pump Court.*

Napier & Stephenson's Digest of the Leading Points in the Subject of Criminal Law necessary to be known for Bar and University Law Examinations. Done into Questions and Answers. By T. BATEMAN NAPIER and RICHARD M. STEPHENSON, Esqrs., Barristers-at-Law. Demy 8vo. 1888. 5*s.*

"We commend the book to candidates for the Bar and University Legal Examinations."—*Pump Court.*

Shearwood's Guide for Candidates for the Professions of Barrister and Solicitor.—Second Edition. By JOSEPH A. SHEARWOOD, Esq., Barrister-at-Law. Demy 8vo. 1887. 6*s.*

"A practical little book for students."—*Law Quarterly Review.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

EXECUTIONS.—Edwards' Law of Execution upon Judgments and Orders of the Chancery and Queen's Bench Divisions of the High Court of Justice.—By C. Johnston Edwards, of Lincoln's Inn, Esq., Barrister-at-Law. Demy 8vo. 1888. 16*s.*

"Will be found very useful, especially to solicitors. . . . In addition to the other good points in this book, it contains a copious collection of forms and a good index."—*Solicitors' Journal.*

"Mr. Edwards writes briefly and pointedly, and has the merit of beginning in each case at the beginning, without assuming that the reader knows anything. He explains who the sheriff is; what the Queen, in a writ *Elegit*, for example, orders him to do; how he does it; and what consequences ensue. The result is to make the whole treatise satisfactorily clear and easy to apprehend. If the index is good—as it appears to be—practitioners will probably find the book a thoroughly useful one."—*Law Quarterly Review.*

EXECUTORS.—Macaskie's Treatise on the Law of Executors and Administrators, and of the Administration of the Estates of Deceased Persons. With an Appendix of Statutes and Forms. By S. C. Macaskie, Esq., Barrister-at-Law. 8vo. 1881. 10*s.* 6*d.*

Williams' Law of Executors and Administrators.—Ninth Edition. By the Hon. Sir Roland Vaughan Williams, a Justice of the High Court. 2 vols. Roy. 8vo. (*In the press.*)

EXTRADITION.—Kirchner's L'Extradition.—Recueil Renfermant in Extenso tous les Traités conclus jusqu'au ler Janvier, 1883, entre les Nations civilisées, et donnant la solution précise des difficultés qui peuvent surgir dans leur application. Avec une Préface de Me Georges Lachaud, Avocat à la Cour d'Appel de Paris. Publié sous les auspices de M. C. E. Howard Vincent, Directeur des Affaires Criminelles de la Police Métropolitaine de Londres. Par F. J. Kirchner, Attaché à la Direction des Affaires Criminelles. In 1 vol. (1150 pp.). Royal 8vo. 1883. 2*l.* 2*s.*

FACTORS ACTS.—Neish & Carter's Factors Act, 1889: with Commentary and Notes: designed particularly for the use and guidance of Mercantile Men. By Charles H. L. Neish and A. T. Carter, Esqrs., Barristers-at-Law. Royal 12mo. 1890. 4*s.*

FARM, LAW OF.—Dixon's Law of the Farm, with a Digest of Cases connected with the Law of the Farm, and including the Agricultural Holdings (England) Act, 1883, and other recent Acts, and the Agricultural Customs of England and Wales. Fifth Edition. By Aubrey J. Spencer, Esq., Barrister-at-Law. Demy 8vo. (*In the press.*)

"It is impossible not to be struck with the extraordinary research that must have been used in the compilation of such a book as this."—*Law Journal.*

FIXTURES.—Amos and Ferard on the Law of Fixtures and other Property partaking both of a Real and Personal Nature. Third Edition. By C. A. Ferard and W. Howland Roberts, Esqrs., Barristers-at-Law. Demy 8vo. 1883. 18*s.*

"An accurate and well written work."—*Saturday Review.*

FORMS.—Archibald.—*Vide* "Chamber Practice."

Bullen and Leake.—*Vide* "Pleading."

Chitty's Forms of Practical Proceedings in the Queen's Bench Division of the High Court of Justice. Twelfth Edition. By T. W. Chitty, Esq., Barrister-at-Law. Demy 8vo. 1883. 1*l.* 18*s.*

"The forms themselves are brief and clear, and the notes accurate and to the point.—*Law Journal.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

FORMS—*continued.*

Daniell's Forms and Precedents of Proceedings in the Chancery Division of the High Court of Justice and on Appeal therefrom.—Fourth Edition, with Summaries of the Rules of the Supreme Court, Practical Notes and References to the Sixth Edition of "Daniell's Chancery Practice." By CHARLES BURNEY, B.A. (OXON.), a Chief Clerk of the Hon. Mr. Justice Chitty. Royal 8vo. 1885. 2*l.* 10*s.*

"Mr. Burney appears to have performed the laborious task before him with great success."—*Law Journal.*

"The standard work on Chancery Procedure."—*Law Quarterly Review.*

FRAUD AND MISREPRESENTATION.—Moncreiff's Treatise on the Law relating to Fraud and Misrepresentation.—By the Hon. FREDERICK MONCREIFF, of the Middle Temple, Barrister-at-Law. Demy 8vo. 1891. 21*s.*

"The task which Mr. Moncreiff has undertaken has been handled carefully and with considerable ability, and the work will well repay perusal."—*Solicitors' Journal*, June 6, 1891.

"There is a very full and carefully edited Index, with a large Table of Cases. Altogether the work is an admirable one."—*Law Gazette*, May 21, 1891.

GOODWILL.—Allan's Law relating to Goodwill.—By CHARLES E. ALLAN, M.A., LL.B., Esq., Barrister-at-Law. Demy 8vo. 1889. 7*s.* 6*d.*

"A work of much value upon a subject which is by no means easy."—*Solicitors' Journal.*

HIGHWAYS.—Baker's Law of Highways in England and Wales, including Bridges and Locomotives. Comprising a succinct Code of the several Provisions under each Head, the Statutes at length in an Appendix; with Notes of Cases, Forms, and copious Index. By THOMAS BAKER, Esq., Barrister-at-Law. Royal 12mo. 1880. 15*s.*

Bazalgette and Humphreys.—*Vide* "Local and Municipal Government."

Chambers' Law relating to Highways and Bridges, being the Statutes in full and brief Notes of 700 Leading Cases. By GEORGE F. CHAMBERS, Esq., Barrister-at-Law. 1878. 7*s.* 6*d.*

HOUSE TAX.—Ellis' Guide to the House Tax Acts, for the use of the Payer of Inhabited House Duty in England.—By ARTHUR M. ELLIS, LL.B. (Lond.), Solicitor, Author of "A Guide to the Income Tax Acts." Royal 12mo. 1885. 6*s.*

"We have found the information accurate, complete and very clearly expressed."—*Solicitors' Journal.*

HUSBAND AND WIFE.—Lush's Law of Husband and Wife; within the Jurisdiction of the Queen's Bench and Chancery Divisions. By C. MONTAGUE LUSH, Esq., Barrister-at-Law. 8vo. 1884. 20*s.*

"Mr. Lush has one thing to recommend him most strongly, and that is his accuracy."—*Law Magazine.*

INCOME TAX.—Ellis' Guide to the Income Tax Acts.—For the use of the English Income Tax Payer. Second Edition. By ARTHUR M. ELLIS, LL.B. (Lond.), Solicitor. Royal 12mo. 1886. 7*s.* 6*d.*

"Contains in a convenient form the law bearing upon the Income Tax."—*Law Times.*

INLAND REVENUE CASES.—Highmore's Summary Proceedings in Inland Revenue Cases in England and Wales.—Second Edition. By N. J. HIGHMORE, Esq., Barrister-at-Law, and of the Solicitors' Department, Inland Revenue. Roy. 12mo. 1887. 7*s.* 6*d.*

"Is very complete. Every possible information is given."—*Law Times.*

INSURANCE.—Arnould on the Law of Marine Insurance.—Sixth Edition. By DAVID MACLACHLAN, Esq., Barrister-at-Law. 2 vols. Royal 8vo. 1887. 3*l.*

"As a text book, 'Arnould' is now all the practitioner can want."—*Law Times.*

Lowndes' Practical Treatise on the Law of Marine Insurance.—By RICHARD LOWNDES. Author of "The Law of General Average," &c. Second Edition. Demy 8vo. 1885. 12*s.* 6*d.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

INSURANCE—*continued.*

McArthur on the Contract of Marine Insurance.—Second Edition. By CHARLES MCARTHUR, Average Adjuster. Demy 8vo. 1890. 16*s.*
"The work is carefully executed and brought down to date."—*Law Journal.*

INTERNATIONAL LAW.—Kent's International Law.—Kent's Commentary on International Law. Edited by J. T. ABDY, LL.D., Judge of County Courts. Second Edition. Crown 8vo. 1878. 10*s.* 6*d.*

Nelson's Private International Law.—Selected Cases, Statutes, and Orders illustrative of the Principles of Private International Law as Administered in England, with Commentary. By HORACE NELSON, M.A., B.C.L., Barrister-at-Law. Roy. 8vo. 1889. 21*s.*
"The notes are full of matter, and avoid the vice of discursiveness, cases being cited for practically every proposition."—*Law Times.*

Wheaton's Elements of International Law; Third English Edition. Edited with Notes and Appendix of Statutes and Treaties. By A. C. BOYD, Esq., Barrister-at-Law. Royal 8vo. 1889. 1*l.* 10*s.*
"A handsome and useful edition of a standard work."—*Law Quarterly Review.*
"Wheaton stands too high for criticism, whilst Mr. Boyd's merits as an editor are almost as well established."—*Law Times.*

JOINT STOCKS.—Palmer.—*Vide* "Company Law," "Conveyancing," and "Winding-up."

Thring's Joint Stock Companies' Law.—The Law and Practice of Joint Stock and other Companies, including the Companies Acts, 1862 to 1886, with Notes, Orders, and Rules in Chancery, a Collection of Precedents of Memoranda and Articles of Association, and other Forms required in Making and Administering a Company. Also the Partnership Law Amendment Act, the Life Assurance Companies Acts, and other Acts relating to Companies. By LORD THRING, K.C.B., formerly the Parliamentary Counsel. Fifth Edition. By J. M. RENDEL, Esq., Barrister-at-Law. Royal 8vo. 1889. 1*l.* 10*s.*
"The book has long taken its place among the authoritative expositions of the law of companies. Its very useful forms are a special feature of the book, which will be of great value to practitioners."—*Law Journal.*

JUDGES' CHAMBER PRACTICE.—Archibald.—*Vide* "Chamber Practice."

JUDICATURE ACTS.—Wilson's Practice of the Supreme Court of Judicature: containing the Acts, Orders, Rules, and Regulations relating to the Supreme Court. With Practical Notes. Seventh Edition. By CHARLES BURNEY, a Chief Clerk of the Hon. Mr. Justice Chitty, Editor of "Daniell's Chancery Forms;" M. MUIR MACKENZIE, and C. A. WHITE, Esqrs., Barristers-at-Law. Roy. 8vo. 1888. 1*l.*
"A thoroughly reliable and most conveniently arranged practice guide."—*Law Times*

JUSTICE OF THE PEACE.—Stone's Practice for Justices of the Peace, Justices' Clerks and Solicitors at Petty and Special Sessions, in Summary matters, and Indictable Offences, with a list of Summary Convictions, and matters not Criminal. With Forms. Ninth Edit. By W. H. MACNAMARA, Esq., Barrister-at-Law. Demy 8vo. 1882. 1*l.* 5*s.*

Wigram's Justice's Note Book.—Containing the Jurisdiction and Duties of Justices, and an Epitome of Criminal Law. By the late W. KNOX WIGRAM, Esq., Barrister-at-Law, J. P. Middlesex and Westminster. Sixth Edition. By ARCHIBALD HENRY BODKIN, Esq., Barrister-at-Law. Royal 12mo. 1892. 12*s.* 6*d.*
"The style is clear, and the expression always forcible, and sometimes humorous. The book will repay perusal by many besides those who, as justices, will find it an indispensable companion."—*Law Quarterly Review.*
"We can thoroughly recommend the volume to magistrates."—*Law Times.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

LAND TAX.—Bourdin's Land Tax.—An Exposition of the Land Tax. Third Edition. Including the Recent Judicial Decisions, and the Incidental Changes in the Law effected by the Taxes Management Act, with other Additional Matter. Thoroughly revised and corrected. By SHIRLEY BUNBURY, of the Inland Revenue Department, Assistant Registrar of the Land Tax. Royal 12mo. 1885. 6*s.*

LANDLORD AND TENANT.—Woodfall's Law of Landlord and Tenant.—With a full Collection of Precedents and Forms of Procedure; containing also a collection of Leading Propositions. Fourteenth Edit. By J. M. LELY, Esq., Barrister-at-Law, Editor of "Chitty's Statutes," "Wharton's Law Lexicon," &c. Roy. 8vo. 1889. 1*l.* 18*s.*

"The editor has expended elaborate industry and systematic ability in making the work as perfect as possible."—*Solicitors' Journal.*

Lely and Peck.—*Vide* "Leases."

LANDS CLAUSES ACTS.—Jepson's Lands Clauses Consolidation Acts; with Decisions, Forms, and Table of Costs. By ARTHUR JEPSON, Esq., Barrister-at-Law. Demy 8vo. 1880. 18*s.*

LAW LIST.—Law List (The).—Comprising the Judges and Officers of the different Courts of Justice, Counsel, Special Pleaders, Conveyancers, Solicitors, Proctors, Notaries, &c., in England and Wales; the Circuits, Judges, Treasurers, Registrars, and High Bailiffs of the County Courts; Metropolitan and Stipendiary Magistrates, Official Receivers under the Bankruptcy Act, Law and Public Officers in England and the Colonies, Foreign Lawyers with their English Agents, Clerks of the Peace, Town Clerks, Coroners, &c., &c., and Commissioners for taking Oaths, Conveyancers Practising in England under Certificates obtained in Scotland. Compiled, so far as relates to Special Pleaders, Conveyancers, Solicitors, Proctors and Notaries, by JOHN SAMUEL PURCELL, C.B., Controller of Stamps, and Registrar of Joint Stock Companies, Somerset House, and Published by the Authority of the Commissioners of Inland Revenue. 1891. (*Published about March* 1.) (*Net cash*, 9*s.*) 10*s.* 6*d.*

LAW QUARTERLY REVIEW—Edited by Sir FREDERICK POLLOCK, Bart., M.A., LL.D., Corpus Professor of Jurisprudence in the University of Oxford. Vols. I., II., III., IV., V., VI. and VII. Royal 8vo. 1885-91. *Each*, 12*s.*

☞ *Subscription* 10*s. per annum, post free. Single numbers, each* 2*s.* 6*d.*; *per post*, 2*s.* 9*d.*

The Review includes:—The discussion of current decisions of importance in the Courts of this country, and (so far as practicable) of the Colonies, the United States, British India, and other British Possessions where the Common Law is administered; the consideration of topics of proposed legislation before Parliament; the treatment of questions of immediate political and social interest in their legal aspect; inquiries into the history and antiquities of our own and other systems of law and legal institutions. Endeavour is also made to take account of the legal science and legislation of Continental States in so far as they bear on general jurisprudence, or may throw light by comparison upon problems of English or American legislation. The current legal literature of our own country receives careful attention; and works of serious importance, both English and foreign, are occasionally discussed at length.

LAWYER'S ANNUAL LIBRARY.—(1) The Annual Practice.—By SNOW, BURNEY, and STRINGER. (2) The Annual Digest.—By MEWS. (3) The Annual Statutes.—By LELY. (4) The Annual County Court Practice.—By His Honour Judge HEYWOOD.

The Complete Series, as above, delivered on the day of publication, *net*, 2*l.* Nos. 1, 2, and 3 only, *net*, 1*l.* 10*s.* Nos. 2, 3, and 4 only, *net*, 1*l.* 10*s.* (*Carriage extra*, 2*s.*)

☞ *Subscriptions, payable on or before August* 31*st in each year.*
Full prospectus forwarded on application.

LAWYER'S COMPANION.—*Vide* "Diary."

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

LEADING CASES.—Ball's Leading Cases. *Vide* "Torts."

Haynes' Student's Leading Cases. Being some of the Principal Decisions of the Courts in Constitutional Law, Common Law, Conveyancing and Equity, Probate, Divorce, and Criminal Law. With Notes for the use of Students. Second Edition. By JOHN F. HAYNES, LL.D. Demy 8vo. 1884. 16*s.*

Shirley's Selection of Leading Cases in the Common Law. With Notes. By W. S. SHIRLEY, Esq., Barrister-at-Law. Fourth Edition. By RICHARD WATSON, Esq., Barrister-at-Law. Demy 8vo. 1891. 16*s.*

"Mr. Watson has made some great improvements in the 4th edition of this well-known book. One great defect of previous editions was the absence of an index of cases; this has now been supplied, and more ample references to reports are given and a more scientific arrangement adopted of the leading cases on Contracts. . . . There is a mass of information in Shirley's Common Law Cases. It is difficult of digestion, perhaps, but this is so in the case of all concentrated information. To a student who will reflect, as well as read, a sound knowledge of common law can be gleaned from Shirley."—*Law Notes*, October, 1891.

"The present editor has done his work with great care, and large additions have been made to the cases."—*Law Journal.*

Warburton's Selection of Leading Cases in the Criminal Law. With Notes. By HENRY WARBURTON, Esq., Barrister-at-Law. [Founded on "Shirley's Leading Cases."] Demy 8vo. 1892. 9*s.*

"The cases have been well selected, and arranged. . . . We consider that it will amply repay the student or the practitioner to read both the cases and the notes."—*Justice of the Peace*, Feb. 6, 1892.

LEASES.—Lely and Peck's Precedents of Leases for Years, and other Contracts of Tenancy, and Contracts relating thereto; mainly selected or adapted from existing Collections, including many additional Forms, with a short Introduction and Notes. By J. M. LELY and W. A. PECK, Barristers-at-Law. Royal 8vo. 1889. 10*s.* 6*d.*

"Varied, well considered, and thoroughly practical . . . while a useful addition to the library of the conveyancing counsel, will be still more useful to conveyancing solicitors and estate agents."—*Law Times*, November 9, 1889.

LEXICON.—*Vide* "Dictionary."

LIBEL AND SLANDER.—Odgers on Libel and Slander.—A Digest of the Law of Libel and Slander: the Evidence, Procedure and Practice, both in Civil and Criminal Cases, and Precedents of Pleadings. Second Edition, with a SUPPLEMENT, bringing the Law down to June, 1890. By W. BLAKE ODGERS, LL.D., Barrister-at-Law. Royal 8vo. 1890. 1*l.* 12*s.*

"The best modern book on the law of libel."—*Daily News.*

LIBRARIES AND MUSEUMS.—Chambers' Digest of the Law relating to Public Libraries and Museums, and Literary and Scientific Institutions: with much Practical Information useful to Managers, Committees and Officers of all classes of Associations and Clubs connected with Literature, Science and Art; including Precedents of By-Laws and Regulations, the Statutes in Full, and brief Notes of Leading Cases. Third Edition. By GEO. F. CHAMBERS, Esq., Barrister-at-Law. Roy. 8vo. 1889. 8*s.* 6*d.*

LICENSING.—Lely and Foulkes' Licensing Acts, 1828, 1869, and 1872—1874; with Notes to the Acts, a Summary of the Law, and an Appendix of Forms. Third Edition. By J. M. LELY and W. D. I. FOULKES, Esqrs., Barristers-at-Law. Roy. 12mo. 1887. 10*s.* 6*d.*

"We do not know of a more compact or useful treatise on the subject."—*Sol. Jour.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

LOCAL AND MUNICIPAL GOVERNMENT.—Bazalgette and Humphreys' Law relating to County Councils: being the Local Government Act, 1888, County Electors Act, 1888, the Incorporated Clauses of the Municipal Corporations Act, 1882, and a compendious Introduction and Notes; with Analysis of Statutes affecting the same, Orders in Council, Circulars, and a Copious Index. By C. N. BAZALGETTE and GEORGE HUMPHREYS, Barristers-at-Law, Joint Authors of "The Law of Local and Municipal Government." Third Edition. By GEORGE HUMPHREYS, Esq. Royal 8vo. 1889. 7*s.* 6*d.*

"The most stately as regards size, and the best in point of type of all the works. There is a good introduction . . . the notes are careful and helpful."—*Solicitors' Journal.*

Bazalgette and Humphreys' Law relating to Local and Municipal Government. Comprising the Statutes relating to Public Health, Municipal Corporations, Highways, Burial, Gas and Water, Public Loans, Compulsory Taking of Lands, Tramways, Electric Lighting, Artizans' Dwellings, &c., Rivers' Pollution, the Clauses Consolidation Acts, and many others, fully annotated with cases up to date, a selection of the Circulars of the Local Government Board, with a Table of upwards of 2,500 Cases, and full Index. With Addenda containing the Judicial Decisions and Legislation relating to Local and Municipal Government since 1885. By C. NORMAN BAZALGETTE and GEORGE HUMPHREYS, Esqrs., Barristers-at-Law. Sup. royal 8vo. 1888. 3*l.* 3*s.*

"The book is thoroughly comprehensive of the law on all points of which it professes to treat."—*Law Journal.*

"The work is one that no local officer should be without; for nothing short of a whole library of statutes, reports, and handbooks could take its place."—*Municipal Review.*

Chambers' Popular Summary of the Law relating to Local Government, forming a complete Guide to the new Act of 1888. Second Edition. By G. F. CHAMBERS, Barrister-at-Law. Imp. 8vo. 1888. (*Or bound in Cloth with copy of Act*, 5*s.* 6*d.*) *Net*, 2*s.* 6*d.*

MAGISTERIAL LAW.—Shirley's Elementary Treatise on Magisterial Law, and on the Practice of Magistrates' Courts.—By W. S. SHIRLEY, Esq., Barrister-at-Law. Roy. 12mo. 1881. 6*s.* 6*d.*

Wigram.—*Vide* "Justice of the Peace."

MALICIOUS PROSECUTIONS.—Stephen's Law relating to Actions for Malicious Prosecutions.—By HERBERT STEPHEN, LL.M., of the Inner Temple, Barrister-at-Law, part Author of "A Digest of the Criminal Law Procedure." Royal 12mo. 1888. 6*s.*

"A reliable text-book upon the law of malicious prosecution."—*Law Times.*

MARINE INSURANCE.—*Vide* "Insurance."

MARITIME DECISIONS.—Douglas' Maritime Law Decisions.—An Alphabetical Reference Index to Recent and Important Maritime Decisions. Compiled by ROBT. R. DOUGLAS. Demy 8vo. 1888. 7*s.* 6*d.*

MARRIED WOMEN'S PROPERTY.—Lush's Married Women's Rights and Liabilities in relation to Contracts, Torts, and Trusts. By MONTAGUE LUSH, Esq., Barrister-at-Law, Author of "The Law of Husband and Wife." Royal 12mo. 1887. 5*s.*

"Well arranged, clearly written, and has a good index."—*Law Times.*

Smith's Married Women's Property Acts, 1882 and 1884, with an Introduction and Critical and Explanatory Notes, together with the Married Women's Property Acts, 1870 and 1874, &c. 2nd Edit. Revised. By H. A. SMITH, Esq., Barrister-at-Law. Roy. 12mo. 1884. 6*s.*

MASTER AND SERVANT.—Macdonell's Law of Master and Servant. Part I. Common Law. Part II. Statute Law. By JOHN MACDONELL, M.A., Esq., Barrister-at-Law. Demy 8vo. 1883. 1*l.* 5*s.*

"A work which will be of real value to the practitioner."—*Law Times.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

MERCANTILE LAW.—Russell's Treatise on Mercantile Agency. Second Edition. 8vo. 1873. 14*s.*

Smith's Compendium of Mercantile Law.—Tenth Edition. By JOHN MACDONELL, Esq., a Master of the Supreme Court of Judicature, assisted by GEO. HUMPHREYS, Esq., Barrister-at-Law. 2 vols. Royal 8vo. 1890. 2*l.* 2*s.*

"Of the greatest value to the mercantile lawyer."—*Law Times*, March 22, 1890.
"We have no hesitation in recommending the work before us to the profession and the public as a reliable guide to the subjects included in it, and as constituting one of the most scientific treatises extant on mercantile law."—*Solicitors' Journal.*

Tudor's Selection of Leading Cases on Mercantile and Maritime Law.—With Notes. By O. D. TUDOR, Esq., Barrister-at-Law. Third Edition. Royal 8vo. 1884. 2*l.* 2*s.*

Wilson's Mercantile Handbook of the Liabilities of Merchant, Shipowner, and Underwriter on Shipments by General Vessels.—By A. WILSON, Solicitor and Notary. Royal 12mo. 1883. 6*s.*

Wood's Mercantile Agreements.—The Interpretation of Mercantile Agreements: A Summary of the Decisions as to the Meaning of Words and Provisions in Written Agreements for the Sale of Goods, Charter-Parties, Bills of Lading, and Marine Policies. With an Appendix containing a List of Words and Expressions used in, or in connection with, Mercantile Agreements, and a List of Mercantile Usages. By JOHN DENNISTOUN WOOD, Esq., Barrister-at-Law. Royal 8vo. 1886. 18*s.*

"A book of great use in the interpretation of written mercantile agreements."—*Law Journal.*

MERCHANDISE MARKS ACT.—Payn's Merchandise Marks Act, 1887.—With special reference to the Important Sections and the Customs Regulations and Orders made thereunder, together with the Conventions with Foreign States for Protection of Trade Marks, and Orders in Council, &c. By HOWARD PAYN, Barrister-at-Law, and of the Secretary's Department of the Board of Customs. Royal 12mo. 1888. 3*s.* 6*d.*

"Mr. Payn's lucid introduction places the subject very clearly before the reader, and his book must be a safe guide to all who are interested in the act."—*Law Times.*

METROPOLIS BUILDING ACTS.—Woolrych's Metropolitan Building Acts, together with such clauses of the Metropolis Management Acts as more particularly relate to the Building Acts, with Notes and Forms. Third Edition. By W. H. MACNAMARA, Esq., Barrister-at-Law. 12mo. 1882. 10*s.*

MINES.—Rogers' Law relating to Mines, Minerals and Quarries in Great Britain and Ireland, with a Summary of the Laws of Foreign States, &c. Second Edition Enlarged. By His Honor Judge ROGERS. 8vo. 1876. 1*l.* 11*s.* 6*d.*

MORTGAGE.—Coote's Treatise on the Law of Mortgage.—Fifth Edition. Thoroughly revised. By WILLIAM WYLLYS MACKESON, Esq., one of Her Majesty's Counsel, and H. ARTHUR SMITH, Esq., Barrister-at-Law. 2 vols. Royal 8vo. 1884. 3*l.*

"A complete, terse and practical treatise for the modern lawyer."—*Solicitors' Journal.*

MUNICIPAL CORPORATIONS.—Bazalgette and Humphreys.—*Vide* "Local and Municipal Government."

Lely's Law of Municipal Corporations.—Containing the Municipal Corporation Act, 1882, and the Enactments incorporated therewith. With Notes. By J. M. LELY, Esq., Barrister-at-Law. Demy 8vo. 1882. 15*s.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

NAVY.—Thring's Criminal Law of the Navy, with an Introductory Chapter on the Early State and Discipline of the Navy, the Rules of Evidence, and an Appendix comprising the Naval Discipline Act and Practical Forms. Second Edition. By THEODORE THRING, Esq., Barrister-at-Law, and C. E. GIFFORD, Assistant-Paymaster, Royal Navy. 12mo. 1877. 12*s.* 6*d.*

NEGLIGENCE.—Smith's Treatise on the Law of Negligence Second Edition. By HORACE SMITH, Esq., Barrister-at-Law, Editor of "Addison on Contracts, and Torts," &c. 8vo. 1884. 12*s.* 6*d.*

"Of great value both to the practitioner and student of law."—*Solicitors' Journal.*

NISI PRIUS.—Roscoe's Digest of the Law of Evidence on the Trial of Actions at Nisi Prius.—Sixteenth Edition. By MAURICE POWELL, Esq., Barrister-at-Law. 2 vols. Demy 8vo. 1891. 2*l.* 10*s.*

"Continues to be a vast and closely packed storehouse of information on practice at Nisi Prius."—*Law Journal.*

NONCONFORMISTS.—Winslow's Law Relating to Protestant Nonconformists and their Places of Worship; being a Legal Handbook for Nonconformists. By REGINALD WINSLOW, Esq., Barrister-at-Law. Post 8vo. 1886. 6*s.*

NOTARY.—Brooke's Treatise on the Office and Practice of a Notary of England.—With a full collection of Precedents. Fifth Ed. By G. F. CHAMBERS, Esq., Barrister-at-Law. Demy 8vo. 1890. 1*l.* 1*s.*

OATHS.—Stringer's Oaths and Affirmations in Great Britain and Ireland; being a Collection of Statutes, Cases, and Forms, with Notes and Practical Directions for the use of Commissioners for Oaths, and of all Courts of Civil Procedure and Offices attached thereto. [In succession to "Braithwaite's Oaths."] By FRANCIS A. STRINGER, of the Central Office, Supreme Court of Judicature, one of the Editors of the "Annual Practice." Crown 8vo. 3*s.* 6*d.*

"Indispensable to all commissioners."—*Solicitors' Journal.*

PARISH LAW.—Steer's Parish Law; being a Digest of the Law relating to the Civil and Ecclesiastical Government of Parishes and the Relief of the Poor. Fifth Edition. By W. H. MACNAMARA, Esq., Barrister-at-Law. Demy 8vo. 1887. 18*s.*

"An exceedingly useful compendium of Parish Law."—*Law Times.*
"A very complete and excellent guide to Parish Law."—*Solicitors' Journal.*
"Every subject that can be considered parochial is, we think, contained in this volume, and the matter is brought down to date. It is a compendium which is really compendious."—*Law Journal.*

PARTNERSHIP.—Pollock's Digest of the Law of Partnership; incorporating the Partnership Act, 1890. Fifth Edition. By Sir FREDERICK POLLOCK, Bart., Barrister-at-Law. Author of "Principles of Contract," "The Law of Torts," &c. Demy 8vo. 1890. 8*s.* 6*d.*

"What Sir Frederick Pollock has done he has done well, and we are confident this book will be most popular as well as extremely useful."—*Law Times.*

Turner.—*Vide* "Conveyancing."

PATENTS.—Aston's (T.) Patents, Designs and Trade Marks Act, 1883, with Notes and Index to the Act, Rules and Forms. By THEODORE ASTON, Q.C. Royal 12mo. 1884. 6*s.*

Edmunds' Patents, Designs and Trade Marks Acts, 1883 to 1888, Consolidated, with an Index. By LEWIS EDMUNDS, D.Sc., LL.B., Barrister-at-Law. Imp. 8vo. 1889. *Net* 2*s.* 6*d.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

PATENTS—*continued.*

Edmunds on Patents.—The Law and Practice of Letters Patent for Inventions; with the Patents Acts and Rules annotated, and the International Convention, a full collection of Statutes, Forms, and Precedents, and an Outline of Foreign and Colonial Patent Laws, &c. By LEWIS EDMUNDS, assisted by A. WOOD RENTON, Esqrs., Barristers-at-Law. Royal 8vo. (992 pp.). 1890. 1*l.* 12*s.*

"We have nothing but commendation for the book. Conceived in a large and comprehensive spirit, it is well and thoroughly carried out. . . . The statement of the existing law is accurate and clear."—*Solicitors' Journal.*

"We have no hesitation in saying that the book is a useful and exhaustive one, and one which could not have been produced without much labour and considerable research. It describes the law of letters patent and its history, including proceedings in the Privy Council, international arrangements, and an abridgment of foreign laws on the subject. It would be difficult to make it more complete, and it is printed on good paper."—*Law Times.*

"Taking the book as a whole, it is undoubtedly the most comprehensive book that has yet been written upon the special branch of law, and, having examined it in some detail, we can commend it as answering well to the many tests we have applied."—*Law Journal.*

Johnson's Patentees' Manual.—A Treatise on the Law and Practice of Patents for Inventions. With an Appendix of Statutes, Rules, and Foreign and Colonial Patent Laws, International Convention, and Protocol. Sixth Edition. By JAMES JOHNSON, Esq., Barrister-at-Law; and J. HENRY JOHNSON, Solicitor and Patent Agent. Demy 8vo. 1890. 10*s.* 6*d.*

Morris's Patents Conveyancing.—Being a Collection of Precedents in Conveyancing in relation to Letters Patent for Inventions. Arranged as follows:—Common Forms, Agreements, Assignments, Mortgages, Special Clauses, Licences, Miscellaneous; Statutes, Rules, &c. With Dissertations and Copious Notes on the Law and Practice. By ROBERT MORRIS, Esq., Barrister-at-Law. Royal 8vo. 1887. 1*l.* 5*s.*

"Mr. Morris' forms seem to us to be well selected, well arranged, and thoroughly practical."—*Law Times.*

"The dissertations contain a large amount of valuable and accurate information. The Index is satisfactory."—*Solicitors' Journal.*

Munro's Patents, Designs and Trade Marks Act, 1883, with the Rules and Instructions, together with Pleadings, Orders and Precedents. By J. E. CRAWFORD MUNRO, Esq., Barrister-at-Law. Royal 12mo. 1884. 10*s.* 6*d.*

Thompson's Handbook of Patent Law of all Countries.—By WM. P. THOMPSON, Head of the International Patent Office, Liverpool. Eighth Edition. 12mo. 1889. *Net*, 2*s.* 6*d.*

PERPETUITIES.—Marsden's Rule against Perpetuities.—A Treatise on Remoteness in Limitation; with a chapter on Accumulation and the Thelluson Act. By REGINALD G. MARSDEN, Esq., Barrister-at Law. Demy 8vo. 1883. 16*s.*

PERSONAL PROPERTY.—Shearwood's Concise Abridgment of the Law of Personal Property; showing analytically its Branches and the Titles by which it is held. By J. A. SHEARWOOD, Esq., Barrister-at-Law. 1882. 5*s.* 6*d.*

Smith.—*Vide* "Real Property."

PLEADING.—Bullen and Leake's Precedents of Pleadings, with Notes and Rules relating to Pleading. Fourth Edition. By THOMAS J. BULLEN, Esq., Special Pleader, and CYRIL DODD, Esq., Barrister-at-Law. Part I. Statements of Claim. Royal 12mo. 1882. 1*l.* 4*s.*

Part II. Statements of Defence. By THOMAS J. BULLEN and C. W. CLIFFORD, Esqrs., Barristers-at-Law. Royal 12mo. 1888. 1*l.* 4*s.*

"A very large number of precedents are collected together, and the notes are full and clear."—*Law Times.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

PLEADING—*continued.*

Odgers' Principles of Pleading in Civil Actions under the Judicature Acts.—By W. Blake Odgers, M.A., LL.D., Barrister-at-Law, Author of "A Digest of the Law of Libel and Slander." Demy 8vo. 1892. 8*s.* 6*d.*

"The student or practitioner who desires instruction and practical guidance in our modern system of pleading cannot do better than possess himself of Mr. Odgers' book."—*Law Journal.*

"This is our first real modern text-book of pleading as distinguished from a practice book."—*Law Quarterly Review.*

"A good practical book, which will be of immense assistance to junior counsel."—*Law Notes.*

POISONS.—Reports of Trials for Murder by Poisoning; by Prussic Acid, Strychnia, Antimony, Arsenic and Aconitine; including the trials of Tawell, W. Palmer, Dove, Madeline Smith, Dr. Pritchard, Smethurst, and Dr. Lamson. With Chemical Introductions and Notes. By G. Latham Browne, Esq., Barrister-at-Law, and C. G. Stewart, Senior Assistant in the Laboratory of St. Thomas's Hospital, &c. Demy 8vo. 1883. 12*s.* 6*d.*

POWERS.—Farwell on Powers.—A Concise Treatise on Powers. By George Farwell, Esq., Barrister-at-Law. 8vo. 1874. 1*l.* 1*s.*

PRINTERS, PUBLISHERS, &c.—Powell's Laws specially affecting Printers, Publishers and Newspaper Proprietors. By Arthur Powell, Esq., Barrister-at-Law. Demy 8vo. 1889. 4*s.*

PROBATE.—Browne's Probate Practice: A Treatise on the Principles and Practice of the Court of Probate, in Contentious and Non-Contentious Business. By L. D. Powles, Barrister-at-Law. Including Practical Directions to Solicitors for Proceedings in the Registry. By T. W. H. Oakley, of the Principal Registry, Somerset House. 8vo. 1881. 1*l.* 10*s.*

PROFIT-SHARING PRECEDENTS.—Rawson's Profit-Sharing Precedents, with Notes.—By Henry G. Rawson, of the Inner Temple, Esq., Barrister-at-Law. Royal 12mo. 1891. 6*s.*

"A most interesting and a thoroughly workmanlike book upon a subject which is every day becoming more important, . . . A collection of very serviceable precedents, which employers introducing a system of profit-sharing will do well to study. . . . No collection of precedents has ever been published which is more readable and more interesting than Mr. Rawson'."—*Law Times.*

PUBLIC HEALTH.—Bazalgette and Humphreys.—*Vide* "Local and Municipal Government."

Chambers' Digest of the Law relating to Public Health and Local Government.—With Notes of 1,260 leading Cases. The Statutes in full. A Table of Offences and Punishments, and a Copious Index. Eighth Edition (with Supplement corrected to May 21, 1887). Imperial 8vo. 1881. 16*s.*

Or, the above with the Law relating to Highways and Bridges. 1*l.*

Smith's Public Health Acts Amendment Act, 1890.—With Introduction, Notes, and References to Cases; also an Appendix, containing all the Material Sections of the Public Health Act, 1875; The Public Health (Rating of Orchards) Act, 1890; and The Infectious Diseases (Prevention) Act, 1890: and a Copious Index. By Bovill Smith, M.A., of the Inner Temple and Western Circuit, Barrister-at-Law. Royal 12mo. 1891. 6*s.*

PUBLIC MEETINGS.—Chambers' Handbook for Public Meetings, including Hints as to the Summoning and Management of them. Second Edition. By George F. Chambers, Esq., Barrister-at-Law. Demy 8vo. 1886. *Net*, 2*s.* 6*d.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

QUARTER SESSIONS.—Archbold.—*Vide* "Criminal Law."

Leeming & Cross's General and Quarter Sessions of the Peace.—Their Jurisdiction and Practice in other than Criminal matters. Second Edition. By HORATIO LLOYD, Esq., Judge of County Courts, and H. F. THURLOW, Esq., Barrister-at-Law. 8vo. 1876. 1*l.* 1*s.*

Pritchard's Quarter Sessions.—The Jurisdiction, Practice and Procedure of the Quarter Sessions in Criminal, Civil, and Appellate Matters. By THOS. SIRRELL PRITCHARD, Esq., Barrister-at-Law. 8vo. 1875. (Published at 2*l.* 2*s.*) Reduced to *net* 12*s.*

RAILWAYS.—Browne and Theobald's Law of Railway Companies.—Being a Collection of the Acts and Orders relating to Railway Companies in England and Ireland, with Notes of all the Cases decided thereon, and Appendix of Bye-Laws and Standing Orders of the House of Commons. Second Edition. By J. H. BALFOUR BROWNE, Esq., one of Her Majesty's Counsel, and H. S. THEOBALD, Esq., Barrister-at-Law. Royal 8vo. 1888. 1*l.* 15*s.*

"Contains in a very concise form the whole law of railways."—*The Times.*

"The learned authors seem to have presented the profession and the public with the most ample information to be found whether they want to know how to start a railway, how to frame its bye-laws, how to work it, how to attack it for injury to person or property, or how to wind it up."—*Law Times.*

RATES AND RATING.—Castle's Practical Treatise on the Law of Rating.—Second Edition. By EDWARD JAMES CASTLE, Esq., one of Her Majesty's Counsel. Demy 8vo. 1886. 25*s.*

"A correct, exhaustive, clear and concise view of the law."—*Law Times.*

Chambers' Law relating to Local Rates; with especial reference to the Powers and Duties of Rate-levying Local Authorities, and their Officers; comprising the Statutes in full and a Digest of 718 Cases. Second Edition. By G. F. CHAMBERS, Esq., Barrister-at-Law. Royal 8vo. 1889. 10*s.* 6*d.*

"A complete repertory of the statutes and case law of the subject."—*Law Journal.*

REAL PROPERTY.—Greenwood's Real Property Statutes; comprising those passed during the years 1874—1884, inclusive, consolidated with the earlier statutes thereby amended. With copious notes. Second Edition. By HARRY GREENWOOD, assisted by LEES KNOWLES, Esqrs., Barristers-at-Law. Demy 8vo. 1884. 1*l.* 5*s.*

Leake's Elementary Digest of the Law of Property in Land.—Containing: Introduction. Part I. The Sources of the Law.—Part II. Estates in Land. By STEPHEN MARTIN LEAKE, Barrister-at-Law. Demy 8vo. 8vo. 1874. 1*l.* 2*s.*

Leake's Digest of the Law of Property in Land.—Part III. The Law of Uses and Profits of Land. By STEPHEN MARTIN LEAKE, Barrister-at-Law, Author of "A Digest of the Law of Contracts." Demy 8vo. 1888. 1*l.* 2*s.*

Shearwood's Real Property.—A Concise Abridgment of the Law of Real Property and an Introduction to Conveyancing. Designed to facilitate the subject for Students preparing for examination. By JOSEPH A. SHEARWOOD, Esq., Barrister-at-Law. Third Edition. Demy 8vo. 1885. 8*s.* 6*d.*

"We heartily recommend the work to student's for any examination on real property and conveyancing, advising them to read it after a perusal of other works and shortly before going in for the examination."—*Law Student's Journal.*

"A very useful little work, particularly to students just before their examination."—*Gibson's Law Notes.*

"One of the most obvious merits of the book is its good arrangement. The author evidently understands 'the art of putting things.' All important points are so printed as to readily catch the eye."—*Law Times.*

Shelford's Real Property Statutes.—Ninth Edition. By T. H. CARSON, Esq., Barrister-at-Law. (*In preparation.*)

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

REAL PROPERTY—*continued.*

Smith's Real and Personal Property.—A Compendium of the Law of Real and Personal Property, primarily connected with Conveyancing. Designed as a second book for Students, and as a digest of the most useful learning for practitioners. By JOSIAH W. SMITH, B.C.L., Q.C. Sixth Edition. By the AUTHOR and J. TRUSTRAM, LL.M., Barrister-at-Law. 2 vols. Demy 8vo. 1884. *2l. 2s.*

"A book which he (the student) may read over and over again with profit and pleasure."—*Law Times.*

"Will be found of very great service to the practitioner."—*Solicitors' Journal.*

"The book will be found very handy for reference purposes to practitioners, and very useful to the industrious student as covering a great deal of ground."—*Law Notes.*

"A really useful and valuable work on our system of Conveyancing. We think this edition excellently done."—*Law Student's Journal.*

REGISTRATION.—Rogers.—*Vide* "Elections."

Coltman's Registration Cases.—Vol. I. (1879—1885). Royal 8vo. Calf. *Net, 2l. 8s.*

Fox's Registration Cases.—Vol. I., Part I. (1886), *net, 4s.* Part II. (1887), *net, 6s. 6d.* Part III. (1888), *net, 4s.* Part IV. (1889), *net, 4s.* Part V. (1890), *net, 5s. 6d.* (In continuation of Coltman.)

Smith's (C. Lacey) Registration Cases (1891). *Net, 4s. 6d.* (In continuation of Fox.)

ROMAN LAW.—Goodwin's XII. Tables.—By FREDERICK GOODWIN, LL.D. London. Royal 12mo. 1886. *3s. 6d.*

Greene's Outlines of Roman Law.—Consisting chiefly of an Analysis and Summary of the Institutes. For the use of Students. By T. WHITCOMBE GREENE, Barrister-at-law. Fourth Edition. Foolscap 8vo. 1884. *7s. 6d.*

Ruegg's Student's "Auxilium" to the Institutes of Justinian.—Being a complete synopsis thereof in the form of Question and Answer. By ALFRED HENRY RUEGG, Esq., Barrister-at-Law. Post 8vo. 1879. *5s.*

SALES.—Blackburn on Sales. A Treatise on the Effect of the Contract of Sale on the Legal Rights of Property and Possession in Goods, Wares, and Merchandise. By Lord BLACKBURN. Second Edition. By J. C. GRAHAM, Esq., Barrister-at-Law. Royal 8vo. 1885. *1l. 1s.*

"We have no hesitation in saying that the work has been edited with remarkable ability and success, and if we may hazard a speculation on the cause, we should say that the editor has so diligently studied the excellent methods and work of his author as to have made himself a highly competent workman in the same kind."—*Law Quarterly Review.*

SALES OF LAND.—Clerke and Humphry's Concise Treatise on the Law relating to Sales of Land. By AUBREY ST. JOHN CLERKE, and HUGH M. HUMPHRY, Esqrs., Barristers-at-Law. Royal 8vo. 1885. *1l. 5s.*

Webster's Particulars and Conditions of Sale.—The Law relating to Particulars and Conditions of Sale on a Sale of Land. By WM. FREDK. WEBSTER, Esq., Barrister-at-Law. Royal 8vo. 1889. *1l. 1s.*

"Characterized by clearness of arrangement and careful and concise statement; and we think it will be found of much service to the practitioner."—*Solicitors' Journal.*

"A full account of case law, well arranged under convenient headings, together with a few precedents. The book is fit to be of practical service to a practical man."—*Law Quarterly Review.*

"It forms an admirable digest, evidently prepared with great care, and selected and arranged in a manner likely to be of great practical value. Its treatment has the air of thoroughness, and, although it hardly claims originality, it may be credited with utility."—*Law Journal.*

"A complete and accurate representation of the law. Nothing is shirked or slurred over."—*Law Times.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

SALVAGE.—Kennedy's Treatise on the Law of Civil Salvage.—By William R. Kennedy, Esq., one of Her Majesty's Counsel. Royal 8vo. 1891. 12*s.*

"A learned and scholarly exposition of an important branch of maritime law."—*Solicitors' Journal.*

"The best work on the law of salvage that has yet appeared. It is a complete exposition of the subject, and as such is accurate and exhaustive, without being prolix, and contains copious reference to the authorities applicable to this branch of law."—*Law Times.*

"Mr. Kennedy's work is certainly a valuable contribution to the literature of the subject."—*Law Gazette.*

SETTLED ESTATES STATUTES.—Middleton's Settled Estates Statutes, including the Settled Estates Act, 1877, Settled Land Act, 1882, Improvement of Land Act, 1864, and the Settled Estates Act Orders, 1878, with Introduction, Notes and Forms. Third Edition. By James W. Middleton, Esq., Barrister-at-Law. Royal 12mo. 1882. 7*s.* 6*d.*

SHERIFF LAW.—Churchill's Law of the Office and Duties of the Sheriff, with the Writs and Forms relating to the Office. 2nd Edit. By Cameron Churchill, Esq. Demy 8vo. 1882. 1*l.* 4*s.*

"A very complete treatise."—*Solicitors' Journal.*

"Under-sheriffs, and lawyers generally, will find this a useful book."—*Law Mag.*

SHIPOWNERS.—Holman's Handybook for Shipowners and Masters. Third Edition. By H. Holman, Esq., Barrister-at-Law. Royal 8vo. 1892. 5*s.*

SHIPPING.—Boyd's Merchant Shipping Laws; being a Consolidation of all the Merchant Shipping and Passenger Acts from 1854 to 1876, inclusive, with Notes of all the leading English and American Cases, and an Appendix. By A. C. Boyd, LL.B., Esq., Barrister-at-Law. 8vo. 1876. 1*l.* 5*s.*

SLANDER.—Odgers.—*Vide* "Libel and Slander."

SOLICITORS.—Cordery's Law relating to Solicitors of the Supreme Court of Judicature. With an Appendix of Statutes and Rules, and Notes on Appointments open to Solicitors, and the Right to Admission to the Colonies. Second Edition. By A. Cordery, Esq., Barrister-at-Law. Demy 8vo. 1888. 16*s.*

"The book is very clear, accurate, and practical, and will be found of much value. Without being bulky, it contains in a concise and intelligible form all the matters usually occurring in a solicitor's practice."—*Solicitors' Journal.*

Turner.—*Vide* "Conveyancing" and "Vendors and Purchasers."

SPECIFIC PERFORMANCE.—Fry's Treatise on the Specific Performance of Contracts. By the Hon. Sir Edward Fry, a Lord Justice of Appeal. Third Edition. By the Author and E. Portsmouth Fry, Esq., Barrister-at-Law. Royal 8vo. 1892. 1*l.* 16*s.*

STAMP ACTS.—Highmore's Stamp Act, 1891, and the Stamp Duties Management Act, 1891. With an Introduction and Notes, and a copious Index. By Nathaniel Joseph Highmore, of the Middle Temple, Esq., Barrister-at-Law, Assistant-Solicitor of the Inland Revenue. Demy 8vo. 1891. 5*s.*

"A useful guide to those who desire to understand the present state of the stamp laws."—*Law Journal.*

"Thoroughly well done in every respect."—*Law Gazette.*

"This edition supplies practising lawyers with all the help that acuteness, sagacity and experience can give to them."—*Justice of the Peace.*

STATUTE LAW.—Wilberforce on Statute Law. The Principles which govern the Construction and Operation of Statutes. By E. Wilberforce, Esq., Barrister-at-Law. 1881. 18*s.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

STATUTES, and *vide* "Acts of Parliament."

Chitty's Collection of Statutes from Magna Charta to 1880.—A Collection of Statutes of Practical Utility, arranged in Alphabetical and Chronological order, with Notes thereon. The Fourth Edition. By J. M. LELY, Esq., Barrister-at-Law. In 6 vols. Royal 8vo. 1880. Published at 12*l.* 12*s.*, reduced to *Net* 6*l.* 6*s.*

The following may still be had separately—

44 & 45 Vict.	1881.		8*s.*
46 & 47 Vict.	1883.		14*s.*
47 & 48 Vict.	1884.		10*s.* 6*d.*
48 & 49 Vict.	1885.		12*s.* 6*d.*
50 & 51 Vict.	1887.		10*s.* 6*d.*
51 & 52 Vict.	1888.		12*s.* 6*d.*
51 & 52 Vict.	1888.	(Second Session.)	*Net* 2*s.* 6*d.*
52 & 53 Vict.	1889.		10*s.*
54 & 55 Vict.	1891.		12*s.*

"It is needless to enlarge on the value of 'Chitty's Statutes' to both the Bar and to Solicitors, for it is attested by the experience of many years."—*The Times.*

"A very satisfactory edition of a time-honoured and most valuable work, the trusty guide of present, as of former, judges, jurists, and of all others connected with the administration or practice of the law."—*Justice of the Peace.*

"'Chitty' is pre-eminently a friend in need. Those who do not possess a complete set of the Statutes turn to its chronological index when they wish to consult a particular Act of Parliament. Those who wish to know what Acts are in force with reference to a particular subject turn to that head in 'Chitty,' and at once find all the material of which they are in quest. Moreover, they are, at the same time, referred to the most important cases which throw light on the subject."—*Law Journal.*

SUCCESSION.—Potts' Principles of the Law of Succession to Deceased Persons.—By T. RADFORD POTTS, B.C.L., M.A., Barrister-at-Law. Demy 8vo. 1888. 7*s.* 6*d.*

SUMMARY CONVICTIONS.—Paley's Law and Practice of Summary Convictions under the Summary Jurisdiction Acts.—Seventh Edition. By W. H. MACNAMARA, Esq., Barrister-at-Law. (*In preparation.*)

Wigram.—*Vide* "Justice of the Peace."

SUMMONSES & ORDERS.—Archibald.—*Vide* "Chamber Practice."

TAXES ON SUCCESSION.—Trevor's Taxes on Succession.—A Digest of the Statutes and Cases (including those in Scotland and Ireland) relating to the Probate, Legacy and Succession Duties, with Practical Observations and Official Forms. Fourth Edition. By EVELYN FREETH and R. J. WALLACE, of the Legacy and Succession Duty Office. Royal 12mo. 1881. 12*s.* 6*d.*

TAXPAYERS' GUIDES.—*Vide* "House Tax," "Income Tax," and "Land Tax."

THEATRES AND MUSIC HALLS.—Geary's Law of Theatres and Music Halls, including Contracts and Precedents of Contracts.—By W. N. M. GEARY, J.P. With Historical Introduction. By JAMES WILLIAMS, Esqrs., Barristers-at-Law. 8vo. 1885. 5*s.*

TITHES.—Bolton's Tithe Acts; including the Recent Act for the Limitation and Redemption of Extraordinary Tithe; with an Introduction and Observations and copious Index. By T. H. BOLTON, Solicitor. Royal 12mo. 1886. 6*s.*

Studd's Law of Tithes and Tithe Rent-Charge.—Being a Treatise on the Law of Tithe Rent-Charge, with a sketch of the History and Law of Tithes prior to the Commutation Acts, and including the Tithe Act of 1891, with the Rules thereunder. Second Edition. By EDWARD FAIRFAX STUDD, Esq., Barrister-at-Law. Royal 12mo. 1891. 6*s.*

"This book was originally a good one. Now it is a better one."—*Law Times.*

"This work is thoroughly reliable."—*Solicitors' Journal.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

TORTS.—Addison on Torts; being a Treatise on Wrongs and their Remedies. Sixth Edition. By HORACE SMITH, Esq., Bencher of the Inner Temple, Editor of "Addison on Contracts," &c. Royal 8vo. 1887. 1*l.* 18*s.*

"Upon a careful perusal of the editor's work, we can say that he has done it excellently."—*Law Quarterly Review.*

"As now presented, this valuable treatise must prove highly acceptable to judges and the profession."—*Law Times.*

"An indispensable addition to every lawyer's library."—*Law Magazine.*

Ball's Leading Cases on the Law of Torts, with Notes. Edited by W. E. BALL, LL.D., Esq., Barrister-at-Law, Author of "Principles of Torts and Contracts." Royal 8vo. 1884. 1*l.* 1*s.*

Innes' Principles of the Law of Torts.—By L. C. INNES, lately one of the Judges of the High Court, Madras, Author of "A Digest of the English Law of Easements." Demy 8vo. 1891. 10*s.* 6*d.*

"We have found the work accurate and clear, and believe that it will be a useful addition to any law library."—*Law Quarterly Review.*

"Throughout the work the author is clear in his definitions, and there is no lack of illustrative examples. . . . A welcome addition to the library of the student and the practitioner."—*Law Times.*

Pollock's Law of Torts: a Treatise on the Principles of Obligations arising from Civil Wrongs in the Common Law. Second Edition, to which is added the draft of a Code of Civil Wrongs prepared for the Government of India. By Sir FREDERICK POLLOCK, Bart., Barrister-at-Law. Author of "Principles of Contract," "A Digest of the Law of Partnership," &c. Demy 8vo. 1890. 21*s.*

"Concise, logically arranged, and accurate."—*Law Times.*

"A book which is well worthy to stand beside the companion volume on 'Contracts.' Unlike so many law-books, especially on this subject, it is no mere digest of cases, but bears the impress of the mind of the writer from beginning to end."—*Law Journal.*

Shearwood's Sketch of the Law of Tort for the Bar and Solicitors Final Examinations. By JOSEPH A. SHEARWOOD, Esq., Barrister-at-Law. Royal 12mo. 1886. 3*s.*

TRADE MARKS.—Aston.—*Vide* "Patents."

Graham's Designs and Trade Marks.—By JOHN CAMERON GRAHAM, of the Middle Temple, Barrister-at-Law. Demy 8vo. 1889. 6*s.*

Sebastian on the Law of Trade Marks and their Registration, and matters connected therewith, including a chapter on Goodwill; together with the Patents, Designs and Trade Marks Acts, 1883-8, and the Trade Marks Rules and Instructions thereunder; Forms and Precedents; the Merchandize Marks Act, 1887, and other Statutory Enactments; the United States Statutes, 1870-81, and the Rules and Forms thereunder; and the Treaty with the United States, 1877. Third Edition. By LEWIS BOYD SEBASTIAN, Esq., Barrister-at-Law. Demy 8vo. 1890. 1*l.* 5*s.*

"The work stands alone as an authority upon the law of trade-marks and their registration."—*Law Journal.*

"It is hardly necessary to tell anyone who has consulted the last edition of this book that it is characterized by mastery of the subject, exemplary industry, and completeness and accuracy of statement It is rarely we come across a law book which embodies the results of years of careful investigation and practical experience in a branch of law, or that can be unhesitatingly appealed to as a standard authority. This is what can be said of Mr. Sebastian's book."—*Solicitors' Journal.*

Sebastian's Digest of Cases of Trade Mark, Trade Name, Trade Secret, Goodwill, &c., decided in the Courts of the United Kingdom, India, the Colonies, and the United States of America. By LEWIS BOYD SEBASTIAN, Esq., Barrister-at-Law. 8vo. 1879. 1*l.* 1*s.*

"A digest which will be of very great value to all practitioners who have to advise on matters connected with trade marks."—*Solicitors' Journal.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

TRAMWAYS.—Sutton's Tramway Acts of the United Kingdom; with Notes on the Law and Practice, an Introduction, including the Proceedings before the Committees, Decisions of the Referees with respect to Locus Standi, and a Summary of the Principles of Tramway Rating, and an Appendix containing the Standing Orders of Parliament. Rules of the Board of Trade relating to Tramways, &c. Second Edition. By HENRY SUTTON, assisted by ROBERT A. BENNETT, Barristers-at-Law. Demy 8vo. 1883. 15*s.*

TRUST FUNDS.—Geare's Investment of Trust Funds.—Incorporating the Trustee Act, 1888. By EDWARD ARUNDEL GEARE, Esq., Barrister-at-Law. Second Edition. Including the Trusts Investment Act, 1889. Royal 12mo. 1889. 7*s.* 6*d.*

"The work is written in an easy style, it can very well be read by all trustees, whether they are lawyers or not; and if they will take our advice, and invest their money here before they invest other people's elsewhere, they may be spared much trouble in the future."—*The Jurist.*

TRUSTS AND TRUSTEES.—Godefroi's Law Relating to Trusts and Trustees.—Second Edition. By HENRY GODEFROI, of Lincoln's Inn, Esq., Barrister-at-Law. Royal 8vo. 1891. 1*l.* 12*s.*

"The second edition of this work which lies before us is a model of what a legal text-book ought to be. It is clear in style and clear in arrangement, and we can have little doubt that it will soon take the foremost place among text-books dealing with trusts. Moreover, it is brought up to date by including in its scope the Trust Investment Act of 1889, and the Settled Land Act, 1890. The chapter on Precatory Trusts in Mr. Godefroi's work seems to us particularly good and clear, and the many judicial decisions as to what expressions are sufficient and what are insufficient to import a trust are marshalled with great care and accuracy."—*Law Times.*

Hamilton's Trustee Acts.—Containing the Trustee Act, 1850; the Trustee Extension Act, 1852; and the Trustee Act, 1888; with Supplement of the Lunacy Act, 1890 (53 Vict. c. 5), so far as relates to Vesting Orders. By G. BALDWIN HAMILTON, Esq., Barrister-at-Law, Author of "A Concise Treatise on the Law of Covenants." Demy 8vo. 1890. 6*s.*

"This is a very useful little book. We have perused it with much care, and we have come to the conclusion that it may be safely trusted to as a guide to the complicated law to which it relates."—*Law Quarterly Review.*

VENDORS AND PURCHASERS.—Dart's Vendors and Purchasers.—A Treatise on the Law and Practice relating to Vendors and Purchasers of Real Estate. By the late J. HENRY DART, Esq., one of the Six Conveyancing Counsel of the High Court of Justice, Chancery Division. Sixth Edition. By WILLIAM BARBER, Esq., one of Her Majesty's Counsel, RICHARD BURDON HALDANE, and WILLIAM ROBERT SHELDON, both of Lincoln's Inn, Esqrs., Barristers-at-Law. 2 vols. Royal 8vo. 1888. 3*l.* 15*s.*

"The new edition of Dart is far ahead of all competitors in the breadth of its range, the clearness of its exposition, and the soundness of its law."—*Law Times.*

"The extensive changes and numerous improvements which have been introduced are the result of assiduous labour, combined with critical acumen, sound knowledge, and practical experience."—*Law Quarterly Review.*

Turner's Duties of Solicitor to Client as to Sales, Purchases, and Mortgages of Land.—By EDWARD F. TURNER, Solicitor, Lecturer on Real Property and Conveyancing. Demy 8vo. 1883. 10*s.* 6*d.*

"A careful perusal of these lectures cannot fail to be of great advantage to students, and more particularly, we think, to young practising solicitors."—*Law Times.*

See also Conveyancing.—"Turner."

WAR, DECLARATION OF.—Owen's Declaration of War.—A Survey of the Position of Belligerents and Neutrals, with relative considerations of Shipping and Marine Insurance during War. By DOUGLAS OWEN, Barrister-at-Law. Demy 8vo. 1889. 21*s.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

WATERS.—Musgrave's Dissertation on the Common Law of Waters and its Application to Natural Circumstances other than those of England.—By W. A. B. Musgrave, D.C.L., of the Inner Temple, Barrister-at-Law. Demy 8vo. 1890. *Net*, 2*s*.

WILLS.—Theobald's Concise Treatise on the Law of Wills.—Third Edition. By H. S. Theobald, Esq., Barrister-at-Law. Royal 8vo. 1885. 1*l*. 10*s*.

"A book of great ability and value. It bears on every page traces of care and sound judgment. It is certain to prove of great practical usefulness."—*Solicitors' Journal.*

Weaver's Precedents of Wills.—A Collection of Concise Precedents of Wills, with Introduction, Notes, and an Appendix of Statutes. By Charles Weaver, B.A. Post 8vo. 1882. 5*s*.

WINDING UP.—Palmer's Winding-up Forms.—A Collection of 580 Forms of Summonses, Affidavits, Orders, Notices and other Forms relating to the Winding-up of Companies. With Notes on the Law and Practice, and an Appendix containing the Acts and Rules. By Francis Beaufort Palmer, Esq., Barrister-at-Law, Author of "Company Precedents," &c. 8vo. 1885. 12*s*.

Pitt-Lewis' Winding-up Practice.—A Manual of the Practice as to Winding-up in the High Court and in the County Court; being the Companies (Winding-up) Act, 1890, and the Winding-up of Companies and Associations (Part IV. of the Companies Act, 1862), as now amended, with Notes, and the Companies Winding-up Rules, 1890. Forming a Supplement to "A Complete Practice of the County Courts." By G. Pitt-Lewis, Q.C., M.P., Recorder of Poole. Demy 8vo. 1891. 7*s*. 6*d*.

"This is a book that we can cordially recommend, and forms a fitting supplement to the aptly-named larger work of the same author."—*Law Gazette.*

WRECK INQUIRIES.—Murton's Law and Practice relating to Formal Investigations in the United Kingdom, British Possessions and before Naval Courts into Shipping Casualties and the Incompetency and Misconduct of Ships' Officers. With an Introduction. By Walter Murton, Solicitor to the Board of Trade. Demy 8vo. 1884. 1*l*. 4*s*.

WRONGS.—Addison, Ball, Pollock, Shearwood.—*Vide* "Torts."

REPORTS.—**The largest Stock in London. Prices on application.**

BINDING.—**Executed in the best manner at moderate prices and with dispatch.**

The Law Reports, Law Journal, and all other Reports, bound to Office Patterns, at Office Prices.

PRIVATE ACTS.—*The Publishers of this Catalogue possess the largest known collection of Private Acts of Parliament (including Public and Local), and can supply single copies commencing from a very early period.*

LICENSED VALUERS for Probate, Partnership, &c.

LIBRARIES PURCHASED OR EXCHANGED.

NEW WORKS AND NEW EDITIONS

PREPARING FOR PUBLICATION.

Annual County Court Practice, 1892.—By His Honor Judge WASHINGTON HEYWOOD. 2 vols. Demy 8vo. (*Nearly ready.*)

Browne's Probate Practice.—New Edition. By L. D. POWLES, Barrister-at-Law, and T. W. H. OAKLEY, of the Principal Registry, Somerset House. (*In the press.*)

Cripps' Treatise on the Principles of the Law of Compensation.—Third Edition. By C. A. CRIPPS, Esq., Q.C. (*In preparation.*)

Dixon's Law of the Farm.—Fifth Edition. By AUBREY J. SPENCER, B.A., Esq., Barrister-at-Law. (*In the press.*)

Leake's Law of Contracts.—Third Edition. By STEPHEN MARTIN LEAKE, Barrister-at-Law. (*In the press.*)

Paley's Law and Practice of Summary Convictions under the Summary Jurisdiction Acts.—Seventh Edition. By W. H. MACNAMARA, Esq., Barrister-at-Law. (*In preparation.*)

Phillimore's Ecclesiastical Law of the Church of England.—Second Edition. Edited by Sir WALTER GEO. FRANK PHILLIMORE, Bart., D.C.L., Chancellor of the Diocese of Lincoln. (*In preparation.*)

Roscoe's Admiralty Practice.—Third Edition. By E. S. ROSCOE and T. LAMBERT MEARS, Esqrs., Barristers-at-Law. (*In preparation.*)

Selwyn's Abridgment of the Law of Nisi Prius.—14th Edition. By W. H. MACNAMARA, Esq., Barrister-at-Law. (*In preparation.*)

Seton's Forms of Judgments and Orders in the High Court of Justice and Courts of Appeal, having especial reference to the Chancery Division, with Practical Notes. Fifth Edition. By CECIL C. M. DALE, Esq., Barrister-at-Law, and W. CLOWES, Esq., one of the Registrars of the Supreme Court. Vol. 2. (*In the press.*)

Shelford's Real Property Statutes.—Ninth Edition. By T. H. CARSON, Esq., Barrister-at-Law. (*In preparation.*)

Theobald and Schuster's Lunacy Act, 1890, with Notes.—By H. S. THEOBALD and E. J. SCHUSTER, Barristers-at-Law. (*In preparation.*)

Wheeler's Privy Council Law: A Synopsis of all the Appeals decided by the Judicial Committee from 1876 to 1891. Together with a Précis of the Cases from the Supreme Court of Canada in which special leave to appeal has been granted or refused. By GEORGE WHEELER, Esq., Barrister-at-Law, and of the Judicial Department of the Privy Council. (*In preparation.*)

Whitehead's Church Law.—Being a Concise Dictionary of Statutes, Canons and Regulations affecting the Clergy and Laity. By BENJAMIN WHITEHEAD, B.A., Esq., Barrister-at-Law. (*In the press.*)

Williams' Law of Executors and Administrators.—Ninth Edition. By the Hon. Sir ROLAND VAUGHAN WILLIAMS, a Justice of the High Court. 2 vols. Royal 8vo. (*In the press.*)

STEVENS AND SONS, LD., 119 & 120, CHANCERY LANE LONDON.

Thring's Joint Stock Companies' Law.—The Law and Practice of Joint Stock and other Companies, including the Companies Acts, 1862 to 1886, with Notes, Orders, and Rules in Chancery, a Collection of Precedents of Memoranda and Articles of Association, and other Forms required in Making and Administering a Company. By Lord THRING, K.C.B. *Fifth Edition.* By J. M. RENDEL, Esq., Barrister-at-Law. *Royal* 8*vo.* 1889. *Price* 1*l.* 10*s. cloth.*

"The highest authority on the subject."—*The Times.*

Street's Public Statutory Undertakings. — The Law relating to Public Statutory Undertakings: comprising Railway Companies, Water, Gas, and Canal Companies, Harbours, Docks, and Piers, with special reference to Modern Decisions. By JOHN B. STREET, Esq., Barrister-at-Law. *Demy* 8*vo.* 1890. *Price* 10*s.* 6*d. cloth.*

Woodfall's Law of Landlord and Tenant.—With a full Collection of Precedents and Forms of Procedure; containing also a Collection of Leading Propositions. *Fourteenth Edition.* By J. M. LELY, Esq., Barrister-at-Law. *Royal* 8*vo.* 1889. *Price* 1*l.* 18*s. cloth.*

Lely and Peck's Precedents of Leases for Years, and other Contracts of Tenancy, and Contracts relating thereto, mainly selected or adapted from existing Collections, including many additional Forms, with a short Introduction and Notes. By J. M. LELY and W. A. PECK, Esqrs., Barristers-at-Law. *Royal* 8*vo.* 1889. *Price* 10*s.* 6*d. cloth.*

Oldham and Foster on the Law of Distress —A Treatise on the Law of Distress, with an Appendix of Forms, Table of Statutes, &c. *Second Edition.* By ARTHUR OLDHAM and A. LA TROBE FOSTER, Esqrs., Barristers-at-Law. *Demy* 8*vo.* 1889. *Price* 18*s. cloth.*

Daniell's Chancery Forms.—*Fourth Edition.* Forms and Precedents of Proceeding in the Chancery Division of the High Court of Justice and on Appeal therefrom. *Fourth Edition.* With Summaries of the Rules of the Supreme Court, Practical Notes and References to the Sixth Edition of "Daniell's Chancery Practice." By CHARLES BURNEY, B.A. (Oxon.), a Chief Clerk of the Hon. Mr. Justice Chitty. *Royal* 8*vo.* (1260 pp.) 1885. *Price* 2*l.* 10*s. cloth.*

Edwards' Law of Execution upon Judgments and Orders of the Chancery and Queen's Bench Divisions of the High Court of Justice. By C. J. EDWARDS, Esq., Barrister-at-Law. *Demy* 8*vo.* 1888. *Price* 16*s. cloth.*

Chambers' Law relating to Local Rates, with especial reference to the Powers and Duties of Rate-levying Local Authorities, and their Officers. Comprising the Statutes in full and a Digest of 718 Cases. By G. F. CHAMBERS, Esq., Barrister-at-Law. *Royal* 8*vo.* 1889. *Price* 10*s.* 6*d. cloth.*

Bullen and Leake's Precedents of Pleadings, with Notes and Rules relating to Pleading. Revised and adapted to the Present Practice in the Queen's Bench Division of the High Court of Justice. *Fourth Edition.* Part II. By THOMAS J. BULLEN and CHARLES WALTER CLIFFORD, Esqrs., Barristers-at-Law. *Royal* 12*mo.* 1888. *Price* 24*s. cloth.*

*** **Part I., "Statements of Claim," may still be had, price 24s.**

Macnamara's Law of Carriers.—A Digest of the Law of Carriers of Goods and Passengers by Land and Internal Navigation. By WALTER HENRY MACNAMARA, Esq., Barrister-at-Law, Registrar to the Railway Commission. *Royal* 8*vo.* 1888. *Price* 1*l.* 8*s. cloth.*

"We cordially approve of the general plan and execution of this work."—*Solicitors' Journal.*

Browne and Theobald's Law of Railway Companies.—Being a Collection of the Acts and Orders relating to Railway Companies in England and Ireland, with Notes of all the Cases decided thereon, and Appendix of Bye-Laws and Standing Orders of the House of Commons. *Second Edition.* By J. H. BALFOUR BROWNE, Esq., one of Her Majesty's Counsel, and H. S. THEOBALD, Esq., Barrister-at-Law. *Royal* 8*vo.* 1888. *Price* 1*l.* 15*s. cloth.*

"Contains in a very concise form the whole law of railways."—*The Times.*

Geare's Investment of Trust Funds.—Incorporating the Trustee Act, 1888. *Second Edition.* Including the Trusts Investment Act, 1889. By EDWARD ARUNDEL GEARE, Esq., Barrister-at-Law. *Royal* 12*mo.* 1889. *Price* 7*s.* 6*d. cloth.*

Webster on Conditions of Sale.—The Law relating to Particulars and Conditions of Sale on a Sale of Land. By WILLIAM FREDERICK WEBSTER, Esq., Barrister-at-Law. *Royal 8vo.* 1889. *Price 1l. 1s. cloth.*

"A full account of case law, well arranged under convenient headings, together with a few precedents. The book is fit to be of practical service to a practical man."—*Law Quarterly Review.*

Browne and Powles' Law and Practice in Divorce and Matrimonial Causes. *Fifth Edition.* By L. D. POWLES, Esq., Barrister-at-Law. *Demy 8vo.* 1889. *Price 1l. 6s. cloth.*

Wheaton's Elements of International Law.—*Third English Edition*, with Notes. By A. C. BOYD, Esq., Barrister-at-Law. *Royal 8vo.* 1889. *Price 1l. 10s. cloth.*

Morris' Patents Conveyancing.—Being a Collection of Precedents in Conveyancing in relation to Letters Patent for Inventions, arranged as follows:—Common Forms, Agreements, Assignments, Mortgages, Special Clauses, Licences, Miscellaneous. Statutes, Rules, &c., with Dissertations and Copious Notes on the Law and Practice. By ROBERT MORRIS, M.A., Barrister-at-Law. *Royal 8vo.* 1887. *Price 1l. 5s. cloth.*

"Well selected, well arranged, and thoroughly practical."—*Law Times*, Aug. 20, 1887.

Castle's Treatise on the Law of Rating.—*Second Edition.* By EDWARD JAMES CASTLE, Esq., Q.C. *Demy 8vo.* 1886. *Price 25s. cloth.*

"A correct, exhaustive, clear and concise view of the law."—*Law Times.*

Smith's Practical Exposition of the Principles of Equity, illustrated by the Leading Decisions thereon. For the use of Students and Practitioners. *Second Edition.* By H. ARTHUR SMITH, Esq., M.A., LL.B. (Lond.), Barrister-at-Law. *Demy 8vo.* 1888. *Price 21s. cloth.*

Shirley's Sketch of the Criminal Law.—*Second Edition.* By CHARLES STEPHEN HUNTER, Esq., Barrister-at-Law. *Demy 8vo.* 1889. *Price 7s. 6d. cloth.*

Shirley's Selection of Leading Cases in the Criminal Law, with Notes. By WALTER S. SHIRLEY, Esq., Barrister-at-Law. *Demy 8vo.* 1888. *Price 6s. cloth.*

rley's Leading Cases in the Common Law.—With Notes. *Third Edition.* By WALTER S. SHIRLEY, Esq., Barrister-at-Law. *Demy 8vo.* 1886. *Price 16s. cloth.*

ith's Manual of Common Law.—For Practitioners and Students. Comprising the Fundamental Principles, with useful Practical Rules and Decisions. By JOSIAH W. SMITH, B.C.L., Q.C. *Tenth Edition.* By J. TRUSTRAM, LL.M., Esq., Barrister-at-Law. *Demy 12mo.* 1887. *Price 14s. cloth.*

ith's Manual of Equity Jurisprudence.—A Manual of Equity Jurisprudence for Practitioners and Students, founded on the Works of Story, Spence, and other writers, comprising the Fundamental Principles and the points of Equity usually occurring in General Practice. By JOSIAH W. SMITH, Q.C. *Fourteenth Edition.* By J. TRUSTRAM, LL.M., Esq., Barrister-at-Law. *12mo.* 1889. *Price 12s. 6d. cloth.*

rris' Hints on Advocacy.—Conduct of Cases Civil and Criminal. Classes of Witnesses and Suggestions for Cross-examining them, &c., &c., By RICHARD HARRIS, one of Her Majesty's Counsel. *Ninth Edition.* With a New Chapter on "Tactics." *Royal 12mo.* 1889. *Price 7s. 6d. cloth.*

"Full of good sense and just observation. A very complete Manual of the Advocate's art in Trial by Jury."—*Solicitors' Journal.*

The Pocket Law Lexicon.—Explaining Technical Words, Phrases and Maxims of the English, Scotch and Roman Law, to which is added a complete List of Law Reports, with their Abbreviations. *Second Edition.* Revised and Enlarged. By HENRY G. RAWSON, B.A., of the Inner Temple, Esq., Barrister-at-Law. *Fcap. 8vo.* 1884. *Price 6s. 6d. limp binding.*

"A wonderful little legal Dictionary."—*Indermaur's Law Students' Journal.*

Wharton's Law Lexicon.—Forming an Epitome of the Law of England, and containing full explanations of the Technical Terms and Phrases thereof, both ancient and modern; including the various Legal Terms used in Commercial Business, together with a Translation of the Latin Maxims, and selected Titles from the Civil, Scotch, and Indian Law. *Eighth Edition.* By J. M. LELY, Esq., Barrister-at-Law. *Super-royal 8vo.* 1889. *Price 1l. 18s. cloth.*